

ERRATA.

Page 49, Vol. I, Article I, § 16 of the Constitution of the State of Washington was amended by adding at the end thereof the following:
Provided, that the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

Approved November, 1920.

- § 921. In notes, for infra, § 6720, read § 6723
- § 921. In notes, for infra, § 6555, read § 7516
- § 4895. First line, for [4585] read [4586]
- § 5120. Ninth line from foot, p. 835, for § 5120, read § 5120-1
- § 5189-1. Page 865, for § 5189-1, read 5189
- § 5655. First line, for [5150] read [5150-1]
- § 6908. 2d line, 3d subdiv., for is unable, read is able
- § 7463. 14th line, for The cost of, read The cost or
- § 5301. Note, add: Voting Machine Examiners Abolished, § 10893
- § 7028. Note, add: Hop inspector abolished, § 10893
- § 7847. Add note: This section is impliedly repealed. *Rowe v. James*, 71 Wash. 267, 128 Pac. 539
- §§ 8363, 8364. In notes, for log-sealer, read log-scaler

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REMINGTON'S
COMPILED STATUTES
OF WASHINGTON
ANNOTATED

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SHOWING ALL
STATUTES IN FORCE TO AND INCLUDING THE SESSION LAWS OF 1921
FULLY ANNOTATED TO THE DECISIONS IN THREE TERRITORIAL
AND ONE HUNDRED AND THIRTEEN VOLUMES OF WASHING-
TON STATE REPORTS AND TO THE NOTES IN THE
PRINCIPAL SERIES OF ANNOTATED REPORTS

BY

HON. ARTHUR REMINGTON,

Reporter of the Supreme Court, Author of "Notes on Washington Reports," "Remington's Washington Digest," "Remington & Ballinger's Annotated Codes and Statutes," "Remington's 1915 Washington Code," etc.

IN THREE VOLUMES

VOLUME III

JUSTICES OF PEACE—WEIGHTS AND MEASURES

GENERAL STATUTES

GENERAL INDEX

SAN FRANCISCO
BANCROFT-WHITNEY COMPANY
1922

YANKEE CHRONICLE

299156

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GENERAL STATUTES

OF THE

STATE OF WASHINGTON

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CHAPTER I.

ELECTION, QUALIFICATIONS AND DUTIES OF JUSTICES OF THE PEACE.

§ 7544. [6513.] Election of.

The qualified electors of each election precinct in this state shall, at the next general election, and biennially thereafter, elect one or more justices of the peace as hereinafter provided. [L. '54, p. 222, § 1; Cd. '81, § 1689; L. '88, p. 120, § 1; 1 H. C., § 299.]

See supra, § 4028, tenure of office.

See supra, § 1864, schedule of fees.

See infra, § 7571, salaries in incorporated cities and towns.

§ 7545. [6514.] Number of.

Each election precinct shall be entitled to elect one justice of the peace, but the county commissioners of any county may, at the time of organizing a precinct, or at any time thereafter, authorize the election of one additional justice of the peace in any precinct. [L. '54, p. 222, § 2; Cd. '81, § 1690; L. '88, p. 120, § 2; 1 H. C., § 300.]

§ 7546. [6515.] Qualifications, etc.—Disqualification.

The qualifications, terms of office, duties, powers, and jurisdiction of justices of the peace shall be as now provided by law, except that no justice of the peace shall hereafter have jurisdiction of any action brought to enforce or collect any claim or demand which said justice had, in any manner, attempted to collect as agent or otherwise. [L. '88, p. 120, § 4; 1 H. C., § 302.]

See supra, § 44, jurisdiction, etc., of justices.

See infra, § 7564, in first class cities.

See infra, § 11463, disqualification in township cases.

§ 7547. [6516.] Who Eligible.

No person shall be eligible to the office of justice of the peace who is not a qualified voter, and who has not been a resident of the county in which he is elected six months next preceding his election; nor shall any sheriff, coroner, or clerk of the superior court be eligible to or hold such office. [L. '54, p. 223, § 3; Cd '81, § 1691; 1 H. C., § 303.]

§ 7548. [6517.] Conduct of Election—Certificate of.

The election of justice of the peace shall be conducted, and return of such election made, in the same manner as other elections; and every person duly elected shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be indorsed on the back of the certifi-

cate of election, and together with the certificate, filed in the office of the county auditor. [L. '54, p. 223, § 4; Cd. '81, § 1692; 1 H. C., § 304.]

§ 7549. [6518.] Bond—Form.

Every person elected a justice of the peace shall, at the time of filing his oath of office in the office of the county auditor, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said auditor, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace. Said bond may be in the following form:—

Know all men by these presents, that we, J P, A B, and C D, are held and firmly bound unto the board of county commissioners of the county of —, in the state of Washington, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors, and administrators.

Sealed with our seals; dated this — day of —, A. D. 18—.

Whereas, the said J P has been duly elected a justice of the peace in and for the precinct of —, in the county of —, —, A. D. 18—. Now the condition of the above obligation is such, that if the said J P shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force.

J P [L. S.]

A B [L. S.]

C D [L. S.]

[L. '54, p. 225, § 5; Cd. '81, § 1693; 1 H. C., § 305.]

§ 7550. [6519.] Bond to be Filed—Action and Judgment upon.

Such bond shall be filed in the office of the county clerk, and every person aggrieved by a breach of the condition thereof may, by an action upon the bond, have judgment against the justice and his sureties for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five per cent per annum; and upon any such judgment, stay of execution shall not be allowed. [L. '54, p. 223, § 6; Cd. '81, § 1694; 1 H. C., § 306.]

"Clerk" substituted for "auditor," the act of February 13, 1890, § 5, requiring the bonds of all county and township officers to be filed in the office of the county clerk of their respective counties.

See *infra*, § 9930 et seq., filing and approval of bonds.

Liability of sureties of justices of the peace. 91 *Am. St. Rep.* 575.

Civil liability of judicial officer for false imprisonment. 13 *A. L. R.* 1344.

§ 7551. [6520.] Term of Office.

Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified. [L. '54, p. 224, § 7; Cd. '81, § 1695; 1 H. C., § 307.]

See *supra*, § 4028.

See *infra*, § 7570, in cities.

§ 7552. [6521.] Division of Precinct.

When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace until his term of office expires, and his successor is elected and qualified. [L. '54, p. 224, § 10; Cd. '81, § 1703; 1 H. C., § 315.]

§ 7553. [6522.] Vacancy—Deliver Books to Successor.

If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket books, records, and papers appertaining to his office, or relating to any suit, matter, or controversy committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try and determine such matter, suit, or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such suit or matter was commenced to have done: Provided, that if there be no other justice of the peace in said precinct, such docket, books, records, and papers shall be delivered to the county auditor, who, on demand, shall deliver the same to a justice of said precinct, when there shall be one qualified therein, who shall exercise the same powers as though they had been originally delivered to him. [L. '54, p. 224, § 11; Cd. '81, § 1704; 1 H. C., § 316.]

Cited in 46 Wash. 622.

This section does not recognize the right of a justice to resign without an acceptance of the resignation: State ex rel. Royse v. Superior Court, 46 Wash. 616, 91 Pac. 4.

§ 7554. [6523.] Failure to Deliver Books, etc.

Every person whose duty it is to deliver over the dockets, books, records, and papers, as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars for every three months' neglect to perform such duty, which sum may be recovered at the suit of any person. [L. '54, p. 224, § 12; Cd. '81, § 1705; 1 H. C., § 317.]

Law of 1886, page 174, § 1, void for defective title.

CHAPTER II.**ELECTION, QUALIFICATIONS AND DUTIES OF CONSTABLES.****§ 7555. [6524.] Election—Number of.**

At each general election there shall be elected by the qualified electors of each precinct in the several organized counties of this state as many constables as there are justices of the peace elected, or authorized to be elected in such precinct. [L. '54, p. 225, § 13; Cd. '81, § 2796; 1 H. C., § 319.]

See Const., Art. XI, § 8, may or may not be salaried officers.

See supra, § 4028, tenure of office.

See infra, § 7561, schedule of fees.

See infra, § 7562 et seq., number in cities.

See infra, § 7571, salaries of, in incorporated cities and towns.

Cited in 8 Wash. 535; 58 Wash. 28.

§ 7556. [6525.] Vacancies—How filled.

All vacancies existing in the offices of constable, whether happening by death, resignation, failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election. [L. '54, p. 225, § 14; Cd. '81, § 2797; 1 H. C., § 320.]

See Const., Art. XI, § 6, vacancies, how filled.

§ 7557. [6526.] Election, How to be Conducted—Certificate of.

The election of constables shall be conducted, and the return of such election made, and certificates of election issued, in the same manner as in elections of justice of the peace. [L. '54, p. 225, § 15; Cd. '81, § 2798; 1 H. C., § 321.]

See *supra*, § 7548, conduct of elections for justice of the peace.

§ 7558. [6527.] Oath of.

Every person elected or appointed a constable shall, within twenty days after receiving his certificate of election, take an oath, before any person authorized to administer oaths, that he will support the Constitution of the United States and the laws of this state, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be indorsed on the back of the certificate of election or appointment, and filed, together with the certificate, in the office of the auditor of the proper county. [L. '54, p. 225, § 16; Cd. '81, § 2799; 1 H. C., § 321a.]

§ 7559. [6528.] Bond of.

Every person elected or appointed to the office of constable shall, within the time prescribed for filing his oath of office, enter into a bond to the proper county, with two or more sureties, residents of the county, in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable according to law. The auditor shall indorse thereon his approval of the sureties therein named. [L. '54, p. 225, § 17; Cd. '81, § 2800; 1 H. C., § 322.]

See *infra*, § 9930 et seq., approval and filing of bonds.

Liability of constable or his bond
for the defaults and misfeasan-
ces of his assistants or deputies. 1
A. L. R. 236; 12 A. L. R. 981.

Liability of surety on constable's
bond for assault made in serving
or executing civil writ or process.
8 L. R. A. (N. S.) 1223.

§ 7560. [6529.] Duties of Constables Generally.

Any constable may, within his county, serve any writ, process, or order lawfully directed to him by any justice of the peace, judge of the superior court, or coroner, and generally do and perform all acts by law required of constables. [L. '54, p. 225, § 18; Cd. '81, § 2801; 1 H. C., § 323.]

See § 4173, *supra*, for remainder of section as it stood in code of 1881.

Cited in 58 Wash. 28.

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§ 7561. [6530.] Constable's Fees.

For serving any arrest warrant in a criminal action, or making an arrest in cases where an arrest may be lawfully made without a warrant, besides mileage, two dollars. For other services he shall receive the same fees and mileage as is paid to a sheriff for like services. [L. '07, p. 88, § 1. See, p. 92.]

See *supra*, § 497, sheriff's fees.

CHAPTER III.**JUSTICES AND CONSTABLES IN CITIES AND TOWNS.****§ 7562. [6531.] Election in Incorporated Cities—Number.**

Each incorporated city in this state, together with any adjoining precincts, if any there are, lying partly within and partly without said city, shall, for the purposes of this act, and for fixing and limiting the number of justices of the peace to be elected in such city, be deemed and considered one precinct, and the qualified electors within the limits thereof shall, at each general election at the several polling places therein, vote for and elect two justices of the peace, and no more. [L. '88, p. 120, § 3; 1 H. C., § 301.]

Superseded as to cities of over five thousand inhabitants by the next section

See *infra*, §§ 8992, 9192, designation as police judge in cities.

Cited in 58 Wash. 649.

§ 7563. [6532.] Number in Cities of Over Five Thousand Inhabitants.

There shall be elected at the general election to be held in November, 1898, and biennially thereafter in cities of more than five thousand inhabitants only one justice of the peace and one constable and no more. [L. '97, p. 110, § 1.]

Superseded as to first class cities by the next section.

Cited in 58 Wash. 649; 78 Wash. 625.

Creation and Abolition of Office: See Remington's Digest, J. P., § 1-A; State ex rel. Williams v. Brooks, 58 Wash. 648,

109 Pac. 211; State ex rel. Elwood v. Lovering, 78 Wash. 624, 139 Pac. 617; State ex rel. Fair v. Hamilton, 92 Wash. 347, 159 Pac. 379.

§ 7564. [6533.] Number in City of First Class—Justice must be Attorney.

Each incorporated city of the first class in this state, together with any adjoining precincts, if any there are, lying partly within and partly without said city, shall for the purposes of this act, and for fixing and limiting the number of justices of the peace to be elected in such city, be deemed and considered one precinct, and the qualified electors within the limits thereof shall, at each general election vote for and elect two justices of the peace, who shall be attorneys at law, duly admitted to practice in the supreme court of the state, and one constable. [L. '99, p. 135, § 1.]

Cited in 78 Wash. 588; 92 Wash. 376.

§ 7565. [6533-1.] Number in Cities of Over Fifty Thousand Population.

After the taking effect of this act, there shall be in cities of fifty thousand population two justices of the peace and two constables, and

one additional justice and one additional constable in such cities for each additional fifty thousand population or a major fraction thereof, to be elected at the general election to be held in November, 1914, and quadrennially thereafter, whose term of office shall be for the term of four years from the second Monday of January following the election: Provided, there shall not be more than five justices in any city unless the same has a population of five hundred thousand or more: And provided further, that nothing in this act shall be construed to affect justices of the peace or constables or the offices of justices of the peace or constables in cities having a population of less than fifty thousand inhabitants. [L. '15, p. 316, § 1. Cf. L. '13, p. 103, § 1.]

Cited in 92 Wash. 349—351, 353, 354.

But one constable for each justice was intended, and the limitation of justices

limits the number of constables provided for by this section: State ex rel. Fair v. Hamilton, 92 Wash. 347, 159 Pac. 379.

§ 7566. [6533-2.] Commissioners to Appoint.

Whenever it shall appear to the board of county commissioners of any county containing a city of fifty thousand or more that such city is entitled to an additional justice and constable as provided in this act, the board of county commissioners are hereby authorized and directed immediately after this act goes into effect to appoint such additional justice and constable in such city, who shall hold office until his successor is elected and qualified at the next general election. [L. '13, p. 103, § 2.]

Cited in 92 Wash. 349.

§ 7567. [6533-3.] Salaries in Cities Over One Hundred Thousand.

The salaries of such justices of the peace in all cities having a population in excess of one hundred thousand according to the census of the federal government last taken shall be eighteen hundred (1800) dollars per annum. [L. '13, p. 103, § 3.]

§ 7568. [6533-4.] Future Salaries.

The salaries of justices of the peace and constables hereafter elected or appointed shall be and remain the same as are now provided by law. [L. '13, p. 104, § 4.]

§ 7569. [6533-5.] Increase in Cities of Two Hundred and Twenty-five Thousand Population.

That the boards of county commissioners of the counties in which are located cities having a population of two hundred and twenty-five thousand or more are hereby authorized to pay to the justices of the peace in such cities, such compensation in addition to that now provided by law as such boards of county commissioners may deem fit and proper, such additional compensation not to exceed three hundred and fifty dollars (\$350) per annum. [L. '15, p. 317, § 2.]

Cited in 92 Wash. 350.

If this section is unconstitutional in that it authorizes the county commissioners to increase the salaries of certain justices of the peace, the same does not

affect the other portion of the statute fixing the number and term of office of justices and constables in certain cities: State ex rel. Fair v. Hamilton, 92 Wash. 347, 159 Pac. 379.

§ 7570. [6534.] Number in Cities of Over Thirty-five Thousand Inhabitants.

There shall be elected at the general election to be held in November, 1906, and biennially thereafter, in each city having a population of more than thirty-five thousand (35,000) inhabitants and less than eighty thousand (80,000) inhabitants, two justices of the peace and two constables, and in cities having a population of more than eighty thousand (80,000) inhabitants three justices of the peace and three constables, and no more, whose term of office shall be for the period of two years from the second Monday of January following their election. [L. '05, p. 209, § 1.]

§ 7571. [6535.] Salaries in Cities of Over Five Thousand Inhabitants.

The salaries of justices of the peace and constables elected at the general election to be held in November, 1898, and biennially thereafter in cities of more than five thousand inhabitants shall be as follows:—

1. Salaries of justices of the peace, twelve hundred dollars per annum, payable as now provided by law;

2. Salaries of constables, seven hundred and twenty dollars per annum, payable as now provided by law. [L. '97, p. 111, § 2. Cf. L. '91, p. 8, § 1.]

Compare 1 Hill's Code, §§ 3033, 3034.

See Const., Art. IV, § 10, and notes.

Cited in 4 Wash. 92, 94; 15 Wash. 49; 58 Wash. 649; 78 Wash. 625.

Compensation and Fees—Right in General: See Remington's Digest, J. P., § 4; Furth v. McIntosh, 2 Wash. 108, 26 Pac. 79; Rohde v. Seavey, 4 Wash. 91, 29 Pac. 768; State ex rel. Thurston County v.

Grimes, 7 Wash. 445, 35 Pac. 361; Whiting v. Collier, 9 Wash. 412, 37 Pac. 660; Anderson v. Whatcom County, 15 Wash. 47, 45 Pac. 665, 33 L. R. A. 137; Ogden v. Chehalis County, 41 Wash. 45, 82 Pac. 1095.

§ 7572. [6536.] Salaries in Cities of Over Thirty-five Thousand Inhabitants.

The salaries of justices of the peace and constables hereafter elected or appointed in cities having a population of more than thirty-five thousand (35,000) inhabitants shall be as follows: (1) Salaries of justices of the peace in cities having a population of more than thirty-five thousand (35,000) inhabitants, fifteen hundred dollars (\$1,500) per annum, payable as now provided by law. (2) Salaries of constables in cities having a population of more than thirty-five thousand (35,000) inhabitants, nine hundred and sixty dollars (\$960) per annum, payable as now provided by law. [L. '05, p. 209, § 3.]

§ 7573. [6537.] Justices and Constables in City of Eighty Thousand Inhabitants in 1900.

There shall be elected at the general election to be held in November, 1910, and biennially thereafter, in each city having a population of eighty thousand or more inhabitants as shown by the government census of 1900, four justices of the peace and four constables, and no more,

whose term of office shall be for the period of two years from the second Monday of January following their election. [L. '09, p. 567, § 1.]

Cited in 58 Wash. 27; 92 Wash. 349.

§ 7574. [6538.] Commissioners to Appoint Immediately.

The board of county commissioners of each county in which there is a city having a population of eighty thousand or more inhabitants as shown in the government census of 1900, are hereby authorized and directed, immediately after this act goes into effect, to appoint one additional justice of the peace and one additional constable in such city, so that there shall be four justices of the peace and four constables in such city. [L. '09, p. 567, § 2.]

"Act" refers to §§ 7573—7576.

§ 7575. [6539.] Salaries.

The salaries of justices of the peace hereafter elected or appointed in cities having a population of eighty thousand or more inhabitants, as shown by the government census of 1900, shall be as follows: First—Salaries of justices of the peace in such cities, eighteen hundred dollars per annum, payable as now provided by law. Second—Salaries of constables in such cities, twelve hundred dollars per annum, payable as now provided by law. [L. '09, p. 567, § 3.]

§ 7576. [6540.] Power of Clerks.

The clerks of any justice courts provided by this act shall have power to take testimony and administer oaths and affirmations in any action, suit or proceeding in the court for which they are appointed. [L. '09, p. 567, § 4.]

See *infra*, § 7583, clerk, when allowed.

CHAPTER IV.

DISPOSITION OF FEES AND FINES.

§ 7577. [6541.] To Pay Over Moneys, etc.

It shall be the duty of every justice, on the first Mondays in January and July in every year, and on going out of office to pay over to the treasurer of his county all money he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months; and he shall, at the same time, deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affidavit that he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months in his hands; and the treasurer's receipt therefor he shall file with the auditor, who shall give him a quietus. [L. '63, p. 379, § 181; Cd. '81, § 1901; 1 H. C., § 318.]

§ 7578. [6542.] Fees for Justices and Constables.

The justices of the peace and constables shall charge and collect for the use of their respective counties, and pay into the county treasury on

the first Monday in each month, and on going out of office, all the fees now or hereafter allowed by law paid or chargeable in all cases, except such fees as are a charge against the county or state, and also on the first Monday in each month, and on going out of office, the said justices of the peace shall pay into the county treasury all moneys they shall have received on account of fines collected for violations of any state law. [L. '91, p. 8, § 3; 1 H. C., § 3035.]

Schedule of fees, see *supra*, § 1864.

§ 7579. [6543.] Fee-book must be Kept, and How.

Each of the said justices of the peace and constables shall keep a fee-book, open to public inspection during office hours, in which must be entered at once and in detail all fines and fees or compensations of whatever nature, kind, or description collected or chargeable. On the first Monday of each and every month the said justices of the peace and constables must add up each column in their fee-books to the first of each month and set down the totals, and on the expiration of the term of said officer they must deliver to the county auditor all fee-books kept by them. [L. '91, p. 8, § 4; 1 H. C., § 3036.]

§ 7580. [6544.] Moneys Collected, How Paid in, and to Whom—Affidavits.

All fees and compensation collected from any source, and all fines collected for violations of any state law; shall be paid to the county treasurer on the first Monday of the following month, and the said justices and constables at the same time shall deliver to such treasurer a statement and copy of the fee-book for the month last past, showing by items the sources from which such fees and fines were derived, and shall append thereto an affidavit that they have received no other money for fees or fines, not before paid over to such treasurer. The treasurer shall file and preserve in his office said statements and affidavits, and shall issue to said justices and constables one original and one duplicate receipt therefor, and the said justices and constables shall preserve one in their offices and file the duplicate with the county auditor, whereupon the auditor shall charge the treasurer with the amount shown by the receipt. [L. '91, p. 9, § 5; 1 H. C., § 3037.]

§ 7581. [6545.] Fees to Go into Salary Fund of County Treasury.

All fees by this chapter directed to be paid into the county treasury, when received shall be put into the salary fund of the county treasury. [L. '91, p. 9, § 6; 1 H. C., § 3038.]

See *infra*, § 11234, county current expense fund created.

§ 7582. [6546.] Salaries, When to be Paid, and How.

The salaries of the justices of the peace and constables, provided for in this chapter, shall be paid monthly out of the county treasury, and from the same funds out of which other salaried county officers are paid, and it shall be the duty of the county auditor, on the first Monday of each month and every month, to draw his warrant upon the county treasurer in favor of each of said justices and constables for the amount

of salary due him, under the provisions of this chapter, for the preceding month: Provided, that the auditor shall not draw his warrant for the salary of any such officer for any month until the latter first shall have filed his duplicate receipt with the auditor, properly signed by the treasurer, showing that he has made the statement and settlement for that month as required by this chapter. [L. '91, p. 9, § 7; 1 H. C., § 3039.]

Cited in 18 Wash. 161, 225.

The fact that a claimant for salary as a justice of the peace has failed to comply with the provisions of this section would not excuse the auditor from draw-

ing his warrant in favor of the claimant when his right thereto has been adjudicated by the superior court: State ex rel. Porter v. Headlee, 18 Wash. 220, 51 Pac. 369.

§ 7583. [6547.*] Justice's Clerk, When Allowed—Commissioners to Furnish Books, etc.

In cities of the first class of one hundred thousand population, or more, where there are two or more justices of the peace, such justices acting as a board shall have the power to appoint one chief clerk at a salary to be fixed by the board of county commissioners and such assistant clerks as may be found necessary by said justices, not exceeding the number of justices unless authority to appoint additional clerks be obtained from the board of county commissioners, the salaries of said clerks to be designated by the county commissioners, and paid in the same manner and at the same time as said justices. The board of county commissioners may allow justices of the peace in cities of the second class and cities of the first class of less than one hundred thousand population one clerk, and the board of county commissioners shall furnish for the use of each of the justices provided for in this chapter a suitable office room; and also, they shall furnish to each of the said justices and constables all necessary books, blanks and stationery for conducting the public business of his office; said office room, books, blanks, and stationery to be paid for on the warrant of the auditor out of the general fund of the county. [L. '17, p. 345, § 1; L. '91, p. 10, § 8; 1 H. C., § 3040.]

See supra, § 7576, powers of clerk in certain cities.

Cited in 58 Wash. 28.

§ 7584. [6548.] Traveling Expenses of Constables to be Paid.

In addition to the salary provided to be paid to the constables named in this chapter, the county commissioners shall pay the actual traveling expenses of said constables while on official duties, to be audited by the board of county commissioners. [L. '91, p. 10, § 9; 1 H. C., § 3041.]

§ 7585. [6549.] Services not to be Performed Until Fees are Paid.

Said justices and constables shall not in any case, except for the state or county and other cases provided by law, perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the said justices and constables must perform the services required, and shall give receipts for all fees collected, whenever requested. For every failure or refusal to perform official duty when the fees are tendered, said justices and constables shall be liable on their official bonds. [L. '91, p. 10, § 10; 1 H. C., § 3042.]

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TITLE L. LABOR LAW.

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CHAPTER I.

BUREAU OF LABOR.

§ 7586. [6552.*] Female Assistant Labor Commissioner—Duties and Compensation.

The commissioner of labor shall appoint one female as assistant commissioner of labor, and such female assistant shall have charge, under the direction of the commissioner of labor, of the enforcement of all laws relating to the health, sanitary conditions, surroundings, hours of

labor and all other laws affecting the employment of female wage-earners. She shall receive a salary of eighteen hundred dollars per annum and shall be allowed her actual and necessary expenses in the performance of her duties as such assistant. Such salary and expenses to be paid in the same manner as other expenses of the office of commissioner of labor. [L. '19, p. 127, § 2. Cf. L. '09, p. 815, § 1.]

See *infra*, § 10838, duties of bureau of labor devolve upon director of labor and industries.

See *infra*, § 10893, bureau and commissioner of labor abolished.

§ 7587. [6553.] Duties of Commissioner and Bureau of Labor.

It shall be the duty of such officer and employees of the said bureau to cause to be enforced all laws regulating the employment of children, minors and women, all laws established for the protection of the health, lives and limbs of operators in work-shops, factories, mills and mines, on railroads and other places, and all laws enacted for the protection of the working classes, and declaim it a misdemeanor on the part of the employers to require as a condition of employment the surrender of any rights of citizenship, laws regulating and prescribing the qualifications of persons in trades and handicrafts, and similar laws now in force or hereafter to be enacted. It shall also be the duty of officers and employees of the bureau to collect, assort, arrange and present in biennial reports to the legislature, on or before the first Monday in January, statistical details relating to all departments of labor in the state; to the subjects of corporations, strikes or other labor difficulties; to trade unions and other labor organizations and their effect upon labor and capital; and to such other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions of the laboring classes, and the permanent prosperity of the respective industries of the state as the bureau may be able to gather. In its biennial report the bureau shall also give account of all proceedings of its officers and employees which have been taken in accordance with the provisions of this act or of any other acts herein referred to, including a statement of all violations of law which have been observed, and the proceedings under the same, and shall join with such accounts and such remarks, suggestions and recommendations as the commissioner may deem necessary. [L. '01, p. 132, § 2.]

See notes to § 7586.

See *supra*, § 6290, inspection of bakeries.

See *infra*, §§ 9843—9870, inspection of boats and vessels.

Cited in 111 Wash. 242, 246.

§ 7588. [6554.] Reports by Owners of Factories, etc., to Bureau.

It shall be the duty of every owner, operator or manager of every factory, workshop, mill, mine or other establishment where labor is employed, to make to the bureau, upon blanks furnished by said bureau, such reports and returns as the said bureau may require, for the purpose of compiling such labor statistics as are authorized by this act, and the owner or business manager shall make such reports and returns within the time prescribed therefor by the commissioner of labor, and shall certify to the correctness of the same. In the reports of said bureau no use shall be

made of the names of individuals, firms or corporations supplying the information called for by this section, such information being deemed confidential, and not for the purpose of disclosing personal affairs, and any officer, agent or employee of said bureau violating this provision shall be fined in the sum not exceeding five hundred dollars, or be imprisoned for not more than one year. [L. '01, p. 133, § 3.]

See notes to § 7586.

§ 7589. [6555.] Commissioner may Compel Attendance of Witnesses and Take Testimony.

The commissioner of [or] the bureau of labor shall have the power to issue subpoenas, administer oaths and take testimony in all matters relating to the duties herein required by such bureau, such testimony to be taken in some suitable place in the [vicinity] to which testimony is applicable. Witnesses subpoenaed and testifying before any officer of the said bureau shall be paid the same fees as witnesses before a superior court, such payment to be made from the contingent fund of the bureau. Any person duly subpoenaed under the provisions of this section [who] shall willfully neglect or refuse to attend or testify at the time and place named in the subpoena, shall be guilty of a misdemeanor, and, upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine not less than twenty-five dollars or more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days. [L. '01, p. 134, § 4.]

See notes to § 7586.

§ 7590. [6556.] Bureau to Make Inspection and Gather Statistics.

The commissioner of labor, the coal mine inspector or any employee of the bureau of labor, shall have power to enter any factory, mill, mine, office, workshop or public or private works at any time for the purpose of gathering facts and statistics such as are contemplated by this chapter, and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places and make a record thereof, and any owner or occupant of said factory, mill, mine, office or workshop, or public or private works, or his agent or agents, who shall refuse to allow an inspector or employee of the said bureau to enter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not to exceed ninety days, for each and every offense. [L. '01, p. 134, § 5.]

See notes to § 7586.

§ 7591. [6557.] Keeping of Reports as Records.

No report or return made to the said bureau in accordance with the provisions of this chapter, and no schedule, record or document gathered or returned by the commissioner or inspector, thereof, such reports, schedules and documents being declared public documents. At the expiration of the period of two years above referred to in this section, all

records, schedules and papers accumulating in the said bureau that may be considered of no value by the commissioner may be destroyed: Provided, the authority of the governor be first obtained for such destruction. [L. '01, p. 135, § 6.]

See notes to § 7586.

The enrolled bill shows an evident omission.

§ 7592. [6558.] Biennial Reports—Printing and Distribution of.

The biennial reports of the bureau of labor, provided for by section 7587, shall be printed in the same manner and under the same regulations as the reports of the executive officers of the state: Provided, that not less than five hundred copies of the report shall be distributed, as the judgment of the commissioner may deem best. The blanks and other stationery required by the bureau of labor in accordance with the provisions of this act shall be furnished by the secretary of the state, and shall be paid for from the printing fund of the state. [L. '01, p. 135, § 7.]

§ 7593. [6559.] Duties Devolved on Commissioner.

All the powers and duties heretofore exercised by the assistant commissioner of labor and the factory, mill and railway inspector, are hereby devolved on the commissioner of labor. [L. '01, p. 135, § 9.]

See notes to § 7586.

CHAPTER II.

WAGES AND EMPLOYMENT.

§ 7594. [6560.] Payment for Labor to be Made in Lawful Money.

It shall not be lawful for any corporation, person or firm engaged in manufacturing of any kind in this state, mining, railroading, constructing railroads, or any business or enterprise of whatsoever kind in this state, to issue, pay out or circulate for payment of wages of any labor, any order, check, memorandum, token or evidence of indebtedness, payable in whole or in part otherwise than in lawful money of the United States, unless the same is negotiable and redeemable at its face value, without discount, in cash or on demand, at the store or other place of business of such firm, person, or corporation when the same is issued, and the person who, or company which may issue any such order, check, memorandum, token or other evidence of indebtedness shall upon presentation and demand redeem the same in lawful money of the United States. And when any laborer performing work or labor as above shall cease to work whether by discharge or by voluntary withdrawal the wages due shall be forthwith paid either in cash or by order redeemable in cash at its face value on presentment at bank, store, commissary, or other place in the county where the labor was performed: Provided, such order may be given payable in another county when the place of employment is more convenient of access to the employee. [L. '88, p. 234, § 1; 1 H. C., § 2531; L. '05, p. 219, § 1.]

Cited in 7 Wash. 473; 45 Wash. 292, 293, 295; 47 Wash. 380; 98 Wash. 467; 106 Wash. 109, 111.

This section is not unconstitutional as a deprivation of liberty or property without due process of law, and renders the

wages at once due, notwithstanding a written contract postponing the date of payment upon the employee's voluntarily leaving the service: *Shortall v. Puget Sound Bridge & Dredging Co.*, 45 Wash. 290, 88 Pac. 212, 122 Am. St. Rep. 899.

Laws of 1897, page 91, relating to the payment of obligations and providing that they may be satisfied with any kind of lawful money or currency of the United States, is void as an attempt to legislate upon a matter falling exclusively within federal jurisdiction: *Dennis v. Moses*, 18 Wash. 537, 52 Pac. 333, 40 L. R. A. 302.

An order issued in payment of wages, directing a third party to pay the wage-earner \$180, is by its terms payable in lawful money of the United States, and does not violate the provisions of this section, forbidding the issuance in payment of wages of any order, check, etc., payable in whole or in part otherwise than in lawful money of the United States: *Agee v. Smith*, 7 Wash. 471, 35 Pac. 370.

This section is not violated by the issuance of a due bill dated March 16, 1907, reciting "Due G. G. Pickett or order on 4-15-1907 (meaning April 15, 1907), eight dollars for wages," and by refusal to pay the same on demand,

where it does not appear that the laborer had ceased to work; since the first part of the statute is complied with by issuance of the order payable in cash, and the last part requires payment on demand only when the laborer has ceased to work: *State v. Chehalis Furniture Mfg. Co.*, 47 Wash. 378, 92 Pac. 277.

Whether a laborer "ceases" to work, under this section, where he was employed in a logging camp on "straight time" under a general custom in such case to pay for time during the shut-downs, and upon a shut-down was not paid off with the other men or his hiring discontinued: *Cormier v. Martin Lumber Co.*, 98 Wash. 463, 167 Pac. 1105.

A contract for services made and performed in the state of Idaho, agreeing to pay for wages for labor otherwise than in money, does not contravene this and the next section prohibiting payment for wages for labor in this state otherwise than in lawful money; and the contract being valid in Idaho, is enforceable by action in the courts of this state: *Hatcher v. Idaho Gold & Ruby Mining Co.*, 106 Wash. 108, 179 Pac. 106.

Constitutionality of statute prohibiting payment of wages in "store orders." 1 *Ann. Cas.* 417; 14 *Ann. Cas.* 620; 28 *L. R. A.* 273.

§ 7595. [6561.] Payment for Labor Otherwise Than by Money—Penalty for.

Any officer or agent of any corporation, or any person, firm, or company engaged in the business of manufacturing of any kind in this state, mining, railroading, constructing railroads, or any other business or enterprise of whatsoever kind in this state, who by themselves or agents shall issue or circulate, in payment for wages of labor, any order, check, memorandum, token, or evidence of indebtedness, payable in whole or in part otherwise than in lawful money of the United States, without being payable as required by the last preceding section of this chapter, or who shall fail to redeem this [the] same when presented for payment or demand on said company or its agent, at his or their office or place of business, in lawful money of the United States, where the said order, check, memorandum, token, or evidence of indebtedness was issued, or who shall compel or attempt to coerce any employee of any such corporation, person, firm, or company to purchase goods, wares, merchandise or supplies from any particular person, firm, or corporation, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding three hundred dollars, or upon failure to pay such fine, to be imprisoned in the jail of the county where the misdemeanor is committed, until the said fine is exhausted by imprisonment, as provided by the laws of this state, for each and every offense. [L. '88, p. 234, § 2; 1 H. C., § 2532.]

See note to § 7594.

Cited in 106 Wash. 109, 111.

§ 7596. [6562.] Attorney's Fee and Damages Allowed in Actions on Checks, etc.

Whenever any person or persons, company or corporation, is compelled to sue for the recovery of the face value of check, memorandum, token, or evidence of indebtedness, issued or circulated for the payment of wages for labor, by reason of the failure of any person, firm, company, or person [corporation] issuing the same, failing or refusing to pay the same on demand, as provided by section 7594, then in such case, if judgment should be granted the plaintiff, the court shall tax the attorney's fee of not less than ten nor more than twenty-five dollars to said judgment, and the further sum of twenty-five dollars as damages to the plaintiff, suffered by the plaintiff by reason of being compelled to sue the said claim: Provided, that no plaintiff shall recover more than the face value of his said claim where the payment is refused by reason of a dispute as to the ownership of the said claim, or where it appears satisfactorily to the court or jury that the defendant had a sufficient excuse for the refusal of the payment of the said claim, the burden to prove the said sufficient excuse being on the defendant; and should the court or jury find such sufficient excuse, the same is to be specified in the judgment or verdict of said court or jury. [L. '88, p. 235, § 3; 1 H. C., § 2533.]

Cited in 73 Wash. 34, 36.

A demand on a time check for \$9.50, and the attorney's fee provided by this section, exceeds \$20, and is appealable to the superior court: State ex rel.

Chicago M. & P. S. R. v. Superior Court, 73 Wash. 33, 131 Pac. 466.

Validity of statutory provision for attorneys' fees for failure to pay wages. 11 A. L. R. 897.

§ 7597. [6563.] Assignment of Wages—What Necessary to Validity.

No assignment of, or order for, wages to be earned in the future to secure a loan of less than three hundred dollars, shall be valid against an employer of the person making said assignment or order unless said assignment or order is accepted in writing by the employer, and said assignment or order, and the acceptance of the same, have been filed and recorded with the county auditor of the county where the party making said assignment or order resides, if a resident of the state, or in which he is employed, if not a resident of the state. [L. '09, p. 52, § 1.]

Validity of statute making assignment of wages invalid except under prescribed conditions. Ann. Cas. 1913B, 531; Ann. Cas. 1915C,

691; Ann. Cas. 1917A, 760; 28 L. R. A. (N. S.) 1108; 43 L. R. A. (N. S.) 746.

§ 7598. [6564.] Married Man—Consent of Wife Necessary.

No assignment of, or order for, wages to be earned in the future shall be valid, when made by a married man, unless the written consent of his wife to the making of such assignment or order is attached thereto. [L. '09, p. 52, § 2.]

§ 7599. [6565.] "Blacklisting" Prohibited—Penalty.

Every person in this state who shall willfully and maliciously, send or deliver, or make, or cause to be made, for the purpose of being delivered or sent, or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name,

or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall willfully and maliciously "blacklist" or cause to be "black-listed" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall willfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. [L. '99, p. 34, § 1.]

Cited in 62 Wash. 603; 86 Wash. 220, 221, 224.

The violation of this section gives rise to a civil action for damages: *Dick v. Northern Pac. R. Co.*, 86 Wash. 211, 150 Pac. 8, Ann. Cas. 1917A, 638.

This section is not violated by objection to the employment of a person,

where such person is required to use the objector's property: *O'Brien v. Western Union Tel. Co.*, 62 Wash. 598, 114 Pac. 441.

Legality of blacklisting agreements. 1 Ann. Cas. 474; Ann. Cas. 1917A, 644; 63 L. R. A. 289; 4 L. R. A. (N. S.) 1118; L. R. A. 1916C, 222.

§ 7600. [6565-1.] Prohibiting Fees for Procuring Employment—Preamble.

The welfare of the state of Washington depends on the welfare of its workers and demands that they be protected from conditions that result in their being liable to imposition and extortion.

The state of Washington therefore exercising herein its police and sovereign power declares that the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state. [L. '15, p. 1, § 1.]

Cited in 87 Wash. 672, 689, 690; 93 Wash. 531, 532.

This section has no reasonable relation to any subject other than the protection of those classed as workers or laborers, and was not intended to apply to school teachers who, for a small fee, were put in communication with employers: *Huntworth v. Tanner*, 87 Wash. 670, 152 Pac. 523, Ann. Cas. 1917D, 676.

This act being penal, a doubt as to whether it applies to the employment of "any person" or merely to "workers" must be resolved in favor of the innocence of the party charged with its vio-

lation: *Huntworth v. Tanner*, 87 Wash. 670, 152 Pac. 523, Ann. Cas. 1917D, 676.

A stenographer and bookkeeper is a "worker" within the meaning of this section: *State v. Rossman*, 93 Wash. 530, 161 Pac. 349, L. R. A. 1917B, 1276.

The word "worker" is not so indefinite as to render the act void or so wanting in certainty that it could not support a criminal charge for its violation: *State v. Rossman*, 93 Wash. 530, 161 Pac. 349, L. R. A. 1917B, 1276.

The right to peacefully pursue an avocation being more than a personal right, a court of equity will enjoin the

threatened enforcement of this statute against a business that did not fall within its provisions: *Huntworth v. Tan-* ner, 87 Wash. 670, 152 Pac. 523, Ann. Cas. 1917D, 676.

§ 7601. [6565-2.] Unlawful to Collect Fees.

It shall be unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto. [L. '15, p. 1, § 2.]

Cited in 87 Wash. 672, 689; 93 Wash. 537.

§ 7602. [6565-3.] Penalty.

For each and every violation of any of the provisions of this act the penalty shall be a fine or [of] not more than one hundred dollars and imprisonment for not more than thirty days. [L. '15, p. 2, § 3.]

Cited in 87 Wash. 672.

§ 7603. Seasonal Labor, Defined.

For the purpose of this act the term "seasonal labor" shall include all work performed by any person employed for a period of time greater than one month and where the wages for such work are not to be paid at any fixed interval of time, but at the determination of such employment, and where such person is hired within the state for work to be performed outside the state and the wages earned during said employment are to be paid in this state at the termination of such employment: Provided, that this act shall not apply to wages earned by seamen or other persons where the payment of their wages is regulated by federal statutes. [L. '19, p. 609, § 1.]

§ 7604. Seasonal Labor Contracts to be in Writing.

Every contract for seasonal labor shall be in writing and signed by the employer and the employee, and may provide for advances of moneys to be earned under such contract or for the furnishing of supplies to the employee before the wages are earned, and for the payment of money or the furnishing of supplies during the season. [L. '19, p. 610, § 2.]

§ 7605. Fraud in Securing Advances of Money.

Every employee who with intent to defraud shall have secured advances of money or supplies under a contract for seasonal labor and who with intent to defraud shall willfully fail to perform sufficient labor to compensate for such advances and supplies made under such contract shall be guilty of a gross misdemeanor. [L. '19, p. 610, § 3.]

§ 7606. Disputes Determined by Labor Commissioner.

Upon the written petition of either the employer or the employee setting forth in ordinary and concise language the facts and questions in dispute, the commissioner of labor shall, in person or by his duly authorized deputy, and is hereby authorized to hear and determine all disputes

concerning wages earned at seasonal labor, and allow or reject deductions made from such wages for moneys advanced or supplies furnished before the wages are earned for money paid or supplies furnished during the season or for money paid to third persons upon the written order of the employee. [L. '19, p. 610, § 4.]

See *infra*, § 10838, duties devolve upon director of labor and industries.

See *infra*, § 10893, commissioner of labor abolished.

§ 7607. Hearings.

Upon the filing of any such petition, the commissioner of labor shall notify the other party to the dispute of the time and place when and where such petition will be heard, and may set said petition for a hearing before a regularly appointed deputy at such place in the state as he shall determine is most convenient for the parties, and the commissioner or his deputy shall have power and authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers and records at such hearing, and to administer oaths. Obedience to such subpoenas will be enforced by the courts of the county where such hearing is held. [L. '19, p. 610, § 5.]

See notes to § 7606.

§ 7608. Findings and Awards.

The commissioner of labor, or his deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the commissioner of labor and a copy thereof served upon the employer and upon the employee by registered mail directed to their last known postoffice address. [L. '19, p. 611, § 6.]

See notes to § 7606.

§ 7609. Court Appeal—Notice—Trial De Novo.

Any person feeling himself aggrieved by the finding or award of the commissioner of labor may, as in the preceding section provided, have the right of appeal therefrom to the superior court of the county in which the hearing by the commissioner of labor or his deputy was held, by filing a notice of appeal therefrom in the office of the commissioner of labor within thirty days from the date of the findings and award and, upon the filing of any such notice of appeal, the commissioner of labor shall transmit to the clerk of the superior court to which the appeal is taken the original petition and all exhibits and written evidence filed at the hearing and the original findings and award of the commissioner, and such appeal be set down for hearing and shall be heard *de novo* by the court as appeals from justices of the peace are heard, and the clerk of the court shall notify the parties to the dispute, by mail addressed to their last known place of residence, of the time and place of such trial upon appeal. [L. '19, p. 611, § 7.]

See notes to § 7606.

§ 7610. Findings and Award as Evidence.

In case no appeal is taken from the award of the commissioner and suit shall be brought upon the contract for seasonal labor in any court of competent jurisdiction, the findings and award of the commissioner made in any proceeding under this act at a hearing at which both parties to such suit shall have appeared may be introduced in evidence in such suit, for the information of the court in which the suit is pending, and may, in the discretion of the court, be submitted to the jury as a part of the evidence in the case; but such findings and award shall not be conclusive or binding upon the court or the jury in any such case. [L. '19, p. 611, § 8.]

See notes to § 7606.

§ 7611. Labor Unions Legalized.

It shall be lawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations; or carry out their legitimate purposes by any lawful means. [L. '19, p. 568, § 1.]

§ 7612. Injunctive Relief, Restrictions on.

No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employee or between employer and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable damage to property or to a personal right or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such petition must be in writing describing such damage or injury feared by the applicant, and sworn to by the applicant or his agent or attorney. No such restraining order or injunction shall prohibit any such person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court of the state. [L. '19, p. 568, § 2.]

§ 7613. Employment Contracts—Personal Rights—Remedy for Violation.

The labor of a human being is not a commodity or article of commerce, and the right to enter into the relation of employer and employee or to change that relation except in violation of contract is a legal right. In all cases involving the violation of the contract of employment, either by the employee or employer where no irreparable damage is about to be done to the property, personal rights or property rights of either, no injunction shall be granted, but the parties shall be left to their remedy at law. [L. '19, p. 569, § 3.]

§ 7614. Prosecutions Prohibited.

No person shall be indicted, prosecuted, or tried in any court of this state for entering into or carrying on any lawful arrangement, agreement, or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bettering the conditions of working men and women, or for any lawful act done in pursuance thereof. [L. '19, p. 569, § 4.]

CHAPTER III.**FEMALE AND CHILD LABOR.****§ 7615. [6566.] Health of Female Employees to be Protected.**

It shall be the duty of every agent, proprietor, superintendent, or employer of female help in stores, offices, or schools, within the state of Washington, to provide for each and every such employee a chair, stool, or seat, upon which such female worker or workers shall be allowed to rest when their duties will permit, or when such rest shall or does not interfere with a faithful discharge of their incumbent duties. A violation of any of the provisions of this section shall be deemed a misdemeanor, and upon conviction thereof by any court of competent jurisdiction shall subject the person offending to a fine of not less than ten dollars nor more than fifty dollars. [L. '90, p. 104, §§ 1, 2; 2 H. P. C., § 219.]

§ 7616. [6567.] Seats to be Provided.

Every employer in establishments where females are employed shall provide suitable seats for them and shall permit the use of such seats by them when they are not engaged in the active duties for which they are employed. [L. '01, p. 119, § 2.]

§ 7617. [6567a.] Seats to be Provided.

Every employer in establishments where females are employed shall provide suitable seats for them and shall permit the use of such seats by them when they are not engaged in the active duties for which they are employed, and every such employer shall keep posted in an open and conspicuous place in each room where such females are at work a copy of this act printed in such form and style as may be prescribed by the commissioner of labor. [L. '11, p. 132, § 2.]

§ 7618. [6568.] Penalty.

Any employer, overseer, superintendent, or other agent of any such employer who shall violate any of the provisions of sections 7616 or 7650, shall, upon conviction thereof be fined for each offense in a sum not less than ten dollars nor more than twenty-five dollars. [L. '01, p. 119, § 3.]

§ 7619. [6568a.] Penalty.

Any employer, overseer, superintendent or other agent of any such employer who shall violate any of the provisions of this act, shall, upon conviction thereof be fined for each offense in a sum not less than ten dollars nor more than one hundred dollars. [L. '11, p. 132, § 3.]

"This act": See §§ 7617, 7651.

Cited in 100 Wash. 451.

A Metropolitan Park district cannot be guilty of violating section 7651, *infra*, where the act has no element of a vio-

lation of a public duty imposed by law; in view of this section: *State v. Metropolitan Park District*, 100 Wash. 449, 171 Pac. 254.

§ 7620. [6569.] Women may Follow any Employment—Exception.

Hereafter in this state every avenue of employment shall be open to women; and any business, vocation, profession, and calling followed and pursued by men may be followed and pursued by women, and no person shall be disqualified from engaging in or pursuing any business, vocation, profession, calling, or employment on account of sex: Provided, that this section shall not be construed so as to permit women to hold public office. [L. '90, p. 519, § 1; 1 H. C., § 2961.]

Cited in 7 Wash. 14.

§ 7621. [6570.] Child Labor Prohibited—Permit by Superior Judge.

No person under the age of nineteen years shall be employed as a public messenger by any person, telegraph company, telephone company, or messenger company in any city of the first class in this state, nor shall any child of either sex under the age of fourteen years be hired out to labor in any factory, mill, workshop or store at any time: Provided, that any superior court judge may issue a permit for the employment of any child between the ages of twelve and fourteen years at any occupation, not in his judgment dangerous or injurious to the health or morals of such child, upon evidence satisfactory to him, that the labor of such child is necessary for its support or for the assistance of any parent: And, provided, further, that the judge of the juvenile court may issue permits for the employment of any male child over fourteen years of age, as messenger by telegraph, telephone and messenger companies subject to such limitations and conditions as may be imposed by said court. All permits herein provided for shall be issued for a definite time and shall be revocable at the discretion of the judge by whom issued. [L. '07, p. 238, § 1. Cf. L. '03, p. 136, § 1, repealed by L. '07, p. 239, § 3.]

This and the next section were sought to be repealed by the "Penal Code" of 1909, but that repeal could have no effect on this section.

Unlawful child labor, see *supra*, § 2447.

Cited in 80 Wash. 428, 430, 432.

Under this section the statute is violated and no recovery can be had under the Workmen's Compensation Act, where a boy of thirteen was drowned in a creek about eighty rods from a shingle-mill, while engaged in driving shingle-bolts to

the mill: *Hillestad v. Industrial Ins. Com.*, 80 Wash. 426, 141 Pac. 913, Ann. Cas. 1916B, 789, 6 N. C. C. A. 763.

Validity and construction of child labor acts. 9 Ann. Cas. 1108; 15 Ann. Cas. 473; Ann. Cas. 1913E, 339.

§ 7622. [6571.] Penalty for Violation.

Any employer, or any overseer, superintendent, or agent of such person, telegraph company, telephone company or messenger company who shall violate any of the provisions of the preceding section shall, upon conviction thereof, be fined for each offense not less than ten dollars nor more than five hundred dollars, or be imprisoned in the county jail not to

exceed six months, or by both such fine and imprisonment. [L. '07, p. 238, § 2.]

As to repeal of this section, see § 2304. See note to last section.

§ 7623. [6571-1.] Conditions Injurious to Women.

The welfare of the state of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health or morals. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect. [L. '13, p. 602, § 1.]

Cited in 100 Wash. 642; 113 Wash. 360.

This act, regulating the employment of women and fixing a minimum wage for certain classes of work, is constitutional: *Larsen v. Rice*, 100 Wash. 642, 171 Pac. 1037.

The employment of a woman as a ticket seller in a moving-picture house is "clerical" work, within the general clause of the order of the industrial welfare commission fixing a minimum wage pursuant to this section: *Larsen v. Rice*, 100 Wash. 642, 171 Pac. 1037.

This act is within the police power and does not deprive a person of life, liberty or property without due process of law; and the legislature may delegate the power to determine the facts: *Spo-*

kane Hotel Co. v. Younger, 113 Wash. 359, 194 Pac. 595.

Under this act the commission may make a weekly wage rate at six days; and may fix the amount to be deducted for room and board, where it is left optional to furnish room and board: *Id.*

An order issued in payment of wages directing a third party to pay the wage-earner \$180 is by its terms payable in lawful money of the United States, and does not violate the provisions of Laws of 1887-88, page 234, forbidding the issuance in payment of wages of any order, check, etc., payable in whole or in part otherwise than in lawful money of the United States: *Agee v. Smith*, 7 Wash. 471, 35 Pac. 370.

§ 7624. [6571-2.] Employed Only Under Proper Conditions.

It shall be unlawful to employ women or minors in any industry or occupation within the state of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the state of Washington at wages which are not adequate for their maintenance. [L. '13, p. 602, § 2.]

Employment in saloons, see *supra*, § 2689.

Cited in 100 Wash. 642.

§ 7624½. [6571-3.] Industrial Welfare Commission.

There is hereby created a commission to be known as the "Industrial Welfare Commission" for the state of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the state of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women. [L. '13, p. 602, § 3.]

See *infra*, § 10838, duties devolve upon director of labor and industries.

See *infra*, § 10893, Industrial Welfare Commission abolished.

Cited in 100 Wash. 643; 111 Wash. 247.

§ 7625. [6571-6.] Industrial Welfare Commission to Examine Conditions.

It shall be the duty of the commission to ascertain the wages and conditions of labor of women and minors in the various occupations,

trades and industries in which said women and minors are employed in the state of Washington. To this end, said commission shall have full power and authority to call for statements and to examine, either through its members or other authorized representatives, all books, pay-rolls or other records of all persons, firms and corporations employing females or minors as to any matters that would have a bearing upon the question of wages of labor or conditions of labor of said employees. [L. '13, p. 603, § 6.]

See notes to § 7624½.

§ 7626. [6571-7.] Employer to Keep Record of Females and Minors.

Every employer of women and minors shall keep a record of the names of all women and minors employed by him, and shall on request permit the commission or any of its members or authorized representatives to inspect such record. [L. '13, p. 604, § 7.]

Cited in 100 Wash. 643.

§ 7627. [6571-8.] Minor Defined.

For the purposes of this act a minor is defined to be a person of either sex under the age of eighteen (18) years. [L. '13, p. 604, § 8.]

§ 7628. [6571-9.] Hearing—Witnesses.

The commission shall specify times to hold public hearings, at which times employers, employees or other interested persons may appear and give testimony as to the matter under consideration. The commission shall have power to subpoena witnesses and to administer oaths. All witnesses subpoenaed by the commission shall be paid the same mileage and per diem allowed by law for witnesses before the superior court in civil cases. [L. '13, p. 604, § 9.]

See notes to § 7624½.

Cited in 100 Wash. 643.

§ 7629. [6571-10.] Arbitration Conference—Report.

If, after investigation, the commission shall find that in any occupation, trade or industry, the wages paid to female employees are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employees in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the public shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof. The commission shall make rules and regulations governing the selection of representatives and the mode of procedure of said conference, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of said conference. On request of the commission, it shall be the duty of the conference to recommend to the commis-

sion an estimate of the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health, and to recommend standards of conditions of labor demanded for the health and morals of the employees. The findings and recommendations of the conference shall be made a matter of record for the use of the commission. [L. '13, p. 604, § 10.]

See notes to § 7624½.

Cited in 100 Wash. 643.

§ 7630. [6571-11.] Commission to Fix Wages—Minimum.

Upon the receipt of such recommendations from a conference, the commission shall review the same and may approve any or all of such recommendations, or it may disapprove any or all of them and recommit the subject or the recommendations disapproved of, to the same or a new conference. After such approval of the recommendations of a conference the commission shall issue an obligatory order to be effective in sixty (60) days from the date of said order, or if the commission shall find that unusual conditions necessitate a longer period, then it shall fix a later date, specifying the minimum wage for women in the occupation affected, and the standard conditions of labor for said women; and after such order is effective, it shall be unlawful for any employer in said occupation to employ women over eighteen (18) years of age for less than the rate of wages, or under conditions of labor prohibited for women in the said occupation. The commission shall send by mail so far as practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women affected by the order are employed. When such commission shall specify a minimum wage hereunder the same shall not be changed for one year from the date when such minimum wage is so fixed. [L. '13, p. 605, § 11.]

See notes to § 7624½.

Cited in 100 Wash. 643.

Validity of law fixing minimum wage for women and minors. *Ann. Cas.* 1916A, 225.

§ 7631. [6571-12.] Rehearing.

Whenever wages or standard conditions of labor have been made mandatory in any occupation, upon petition of either employers or employees, the commission may at its discretion reopen the question and reconvene the former conference or call a new one, and any recommendations made by such conference shall be dealt with in the same manner as the original recommendations of a conference. [L. '13, p. 605, § 12.]

See notes to § 7624½.

§ 7632. [6571-13.] Exceptions to Minimum Scale.

For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to an apprentice in such class of employment or occupation as usually requires to be learned by ap-

prentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper. [L. '13, p. 606, § 13.]

See notes to § 7624½.

§ 7633. [6571-14.] Investigate Employment of Minors—Minimum Wage.

The commission may at any time inquire into wages, and conditions of labor of minors, employed in any occupation in the state and may determine wages and conditions of labor suitable for such minors. When the commission has made such determination in the cases of minors it may proceed to issue an obligatory order in the manner provided for in section 7630 and after such order is effective it shall be unlawful for any employer in said occupation to employ a minor for less wages than is specified for minors in said occupation, or under conditions of labor prohibited by the commission for said minors in its order. [L. '13, p. 606, § 14.]

See notes to § 7624½.

Constitutionality of minimum wage statutes for minors. 12 A. L. B. 1226.

§ 7634. [6571-15.] Statistics.

Upon the request of the commission the commissioner of labor of the state of Washington shall furnish to the commission such statistics as the commission may require. [L. '13, p. 606, § 15.]

See notes to § 7624½.

§ 7635. [6571-16.] Witnesses Protected.

Any employer who discharges, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of from twenty-five dollars (\$25) to one hundred dollars (\$100) for each such misdemeanor. [L. '13, p. 606, § 16.]

§ 7636. [6571-17.] Penalty.

Any person employing a woman or minor for whom a minimum wage or standard conditions of labor have been specified, at less than said minimum wage, or under conditions of labor prohibited by the order of the commission; or violating any other of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). [L. '13, p. 607, § 17.]

Cited in 100 Wash. 643.

§ 7637. [6571-17½.] Complaints.

Any worker or the parent or guardian of any minor to whom this act applies may complain to the commission that the wages paid to the workers are less than the minimum rate and the commission shall investigate the same and proceed under this act in behalf of the worker. [L. '13, p. 607, § 17½.]

See notes to § 7624½.

Cited in 100 Wash. 643.

§ 7638. [6571-18.] Civil Actions by Employee.

If any employee shall receive less than the legal minimum wage, except as hereinbefore provided in section 7632, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account. [L. '13, p. 607, § 18.]

Cited in 100 Wash. 644.

A compromise and settlement is no defense to an action by a woman to recover the legal minimum wage for her services under this section: *Larsen v. Rice*, 100 Wash. 642, 171 Pac. 1037.

§ 7639. [6571-19.] No Appeal from Commission on Facts.

All questions of fact arising under this act shall be determined by the commission and there shall be no appeal from its decision upon said question of fact. Either employer or employee shall have the right of appeal to the superior court on questions of law. [L. '13, p. 607, § 19.]

See notes to § 7624½.

Cited in 100 Wash. 644.

§ 7640. [6571-20.] Biennial Report.

The commission shall biennially make a report to the governor and state legislature of its investigations and proceedings. [L. '13, p. 607, § 20.]

§ 7641. [6571-21.*] Employment of Women and Minors in Telephone Industry.

The industrial welfare commission is hereby authorized, in such manner as it shall deem advisable and upon notice and hearing to parties directly affected thereby, to ascertain and establish such standard of wages, hours of work, and conditions of labor of women and minors, employed in telephone and telegraph industries in rural communities and in cities of less than three thousand (3,000) population, as shall be found reasonable and not detrimental to the health and morals of such women and minors and which shall be sufficient for the decent maintenance of such women and minors, and notwithstanding any statute heretofore passed or regulation of such commission heretofore made relative thereto: Provided, that nothing in this act contained shall be construed to amend or repeal any law or any regulation relating to wages, hours of labor or

condition of labor of women or minors excepting as in this act, authorized. [L. '17, p. 98, § 1. Cf. L. '15, p. 243, § 1.]

See notes to § 7624½.

CHAPTER IV. HOURS OF LABOR.

§ 7642. [6572.] Eight-hour Day on Public Works.

Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided. [L. '99, p. 163, § 1.]

Cited in 68 Wash. 578; 74 Wash. 613; 77 Wash. 207, 225.

Sections 7642 to 7644 are not impliedly repealed by sections 7645 to 7647, on the same subject, since the two acts may stand together: *State v. Davis*, 43 Wash. 116, 86 Pac. 201.

An employee of a city fire department is not within this section, providing for an eight-hour day on all work done by contract on public works for municipali-

ties, or subsequent state laws applying only to "work by contract or day labor done": *Stetson v. Seattle*, 74 Wash. 606, 134 Pac. 494.

Statutory restriction of hours of labor upon public works. 1 *Ann. Cas.* 46; 10 *Ann. Cas.* 721; *Ann. Cas.* 1912A, 773; 8 *L. R. A. (N. S.)* 131; 24 *L. R. A. (N. S.)* 201; 34 *L. R. A. (N. S.)* 767.

§ 7643. [6573.] Application—Pay for Overtime in Emergencies.

All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys or buildings for the state or any county or municipality within the state, shall be done under the provisions of this act: Provided, that in cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this act is made a part of all contracts, subcontracts or agreements for work done for the state or any county or municipality within the state. [L. '99, p. 163, § 2.]

"Act" refers to §§ 7642—7644.

Cited in 74 Wash. 614; 77 Wash. 207, 212.

§ 7644. [6574.] Violation, a Misdemeanor—Penalty.

Any contractor, subcontractor, or agent of contractor or subcontractor, foreman or employer who shall violate the provisions of this act, shall be deemed guilty of misdemeanor and upon conviction shall be fined in a sum not less than twenty-five dollars nor more than two hundred dollars, or with imprisonment in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court. [L. '99, p. 163, § 3.]

"Act": See notes, previous section.

Cited in 77 Wash. 207.

Sufficiency of complaint under this sec-

tion: *State v. Davis*, 43 Wash. 116, 86 Pac. 201.

§ 7645. [6575.] State Policy—Eight-hour Day—Emergencies.

It is a part of the public policy of the state of Washington that all work "by contract or day labor done" for it, or any political subdivision

created by its laws, shall be performed in work days of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day. [L. '03, p. 51, § 1.]

Cited in 67 Wash. 534; 68 Wash. 579; 74 Wash. 614, 615; 77 Wash. 208; 78 Wash. 93.

Members of a city fire department, paid monthly salaries, are not "laborers upon public works" within this section: *Neely v. Tacoma*, 78 Wash. 92, 138 Pac. 557.

This section is violated by requiring

city teamsters to harness and hitch their teams, collect their tools, and be at the place of work before the legal day begins, so as to put in eight hours "on the job," and thereafter return to the barn and unhitch and unharness their teams, putting in about an hour in excess of the lawful eight-hour day: *Davies v. Seattle*, 67 Wash. 532, 121 Pac. 987.

§ 7646. [6576.] Cancellation of Contract for Violation of Policy.

All contracts for work for the state of Washington, or any political subdivision created by its laws shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work. [L. '03, p. 51, § 2.]

Cited in 68 Wash. 579; 77 Wash. 208.

§ 7647. [6577.] Stipulation in Contract—Duty of Contracting Officer.

It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in this act, and all such officers and agents, and all officers and agents intrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared. [L. '03, p. 51, § 3.]

"Act" refers to §§ 7645—7647.

Cited in 68 Wash. 579; 77 Wash. 208.

§ 7648. [6578.] Ten Hours a Day's Work for Street-car Employees.

No person, agent, officer, manager or superintendent or receiver of any corporation or owner of street-cars shall require his or its gripmen, motormen, drivers or conductors to work more than ten hours in any twenty-four hours. [L. '95, p. 192, § 1.]

Laborers or employees within purview of statute limiting hours of labor. *Ann. Cas.* 1918C, 338.

What employers are within "hours of labor" statutes. 16 *A. L. R.* 537; 42 *L. R. A. (N. S.)* 1031.

§ 7649. [6579.] Penalty.

Any person, agent, officer, manager, superintendent or receiver of any corporation, or owner of street-car or cars, violating any of the provisions of the last section shall upon conviction thereof shall be deemed guilty of a misdemeanor, and be fined in any sum not less than twenty-five dollars nor more than one hundred dollars for each day in which such gripman, motorman, driver or conductor in the employ of such person, agent,

officer, manager, superintendent or receiver of such corporation or owner is required to work more than ten hours during each twenty-four hours, as provided in the last section, and it is hereby made the duty of the prosecuting attorney of each county of this state to institute the necessary proceedings to enforce the provisions of this and the last section. [L. '95, p. 193, § 2.]

§ 7650. [6580.] Ten Hour Day for Females.

No female shall be employed in any mechanical or mercantile establishment, laundry, hotel or restaurant in this state more than ten hours during any day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four. [L. '01, p. 118, § 1.]

See next section, a later enactment.

For penalty for violation of this section, see *supra*, § 7618.

See *supra*, § 6293, hours for employment of children in bakeries.

§ 7651. [6580a.] Eight Hour Day for Females.

No female shall be employed in any mechanical or mercantile establishment, laundry, hotel or restaurant in this state more than eight hours during any day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four: Provided, however, that the provisions of this section in relation to the hours of employment shall not apply to, nor affect, females employed in harvesting, packing, curing, canning or drying any variety of perishable fruit or vegetable, nor to females employed in canning fish or shell-fish. If it shall be adjudicated that the foregoing proviso and exception shall be unconstitutional and invalid for any reason, an adjudication of invalidity of said proviso or of any part of this act shall not affect the validity of the act as a whole or any other part thereof. [L. '11, p. 131, § 1.]

Cited in 67 Wash. 639; 73 Wash. 40, 41; 90 Wash. 423; 100 Wash. 449.

This section is not unconstitutional as an arbitrary exercise of the police power, or as depriving employees of the right to contract: *State v. Somerville*, 67 Wash. 638, 122 Pac. 324.

A Metropolitan Park district cannot be guilty of violating this section: *State v.*

Metropolitan Park District of Tacoma, 100 Wash. 449, 171 Pac. 254.

Fishing canneries are not exempted from the operation of the statute, and female labor therein is restricted unless such labor is employed in "canning fish": *State v. Pacific American Fisheries*, 73 Wash. 37, 131 Pac. 452.

§ 7652. [6581.] Railroad Trainmen, Limit of Hours of Service.

It shall be unlawful for any common carrier by railroad or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any train to remain on duty more than sixteen consecutive hours, except when by casualty occurring after such employee has started on his trip; or, except by accident or unavoidable delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal; or, to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours

off duty; or, to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period to continue on duty without having had at least eight hours off duty within the twenty-four hour period. [L. '07, p. 25, § 1.]

Cited in 78 Wash. 208.

Act of Congress, March 4, 1907, making it unlawful for any common carrier to require employees to remain on duty for a longer period than sixteen consecutive hours, and providing that the act shall "take effect and be in force one year after its passage," did not take effect as a law until the end of such period; and it did not supersede this section, during such year, upon any principle of comity, or upon the theory that

Congress had occupied the field of statutory regulation and fixed a reasonable time to allow carriers to comply with the regulations: *State ex rel. Atkinson v. Northern Pac. R. Co.*, 53 Wash. 673, 102 Pac. 876, 17 Ann. Cas. 1013.

Statute limiting hours of labor by railroad employees as interference with interstate commerce. *Ann. Cas.* 1917A, 981; 29 *L. R. A. (N. S.)* 240; 52 *L. R. A. (N. S.)* 267.

§ 7653. [6582.] Penalty—Action by Attorney General and Railroad Commission.

Any such common carrier, or any of its officers or agents violating any of the provisions of the preceding section is hereby declared to be guilty of a misdemeanor, and upon conviction thereof shall be liable to a penalty of not less than one hundred or more than one thousand dollars for each and every such violation to be recovered in a suit or suits to be brought by the attorney general; and it shall be the duty of the attorney general to bring such suits upon duly verified information being lodged with him of such violation having occurred, in any superior court; and it shall also be the duty of the railroad commission to fully investigate all cases of the violation of said section, and to lodge with the attorney general information of any such violation as may come to its knowledge. [L. '07, p. 26, § 2.]

§ 7654. [6583.] Eight Hour Day for Coal Miners—Penalty for Employer.

It shall be unlawful for any person, firm, or corporation operating any coal mine, within the state of Washington, to cause any employee to remain at his place of work, where the same is situated underground, for more than eight (8) hours, exclusive of one-half ($\frac{1}{2}$) hour for lunch, in any one calendar day of twenty-four (24) hours. Any person, firm or corporation, or the agent of any person, firm or corporation, violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten dollars (\$10) or more than one hundred dollars (\$100) for each offense. [L. '09, p. 749, § 1.]

§ 7655. [6584.] Penalty for Laborer.

It shall be unlawful for any person in the employ of any person, firm, or corporation operating any coal mine within the state of Washington: to willfully remain at, or in his working place, where the same shall be underground, to exceed eight (8) hours, exclusive of one-half ($\frac{1}{2}$) hour for lunch, in any one calendar day of twenty-four (24) hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than

five dollars (\$5) or more than twenty dollars (\$20) for each offense. [L. '09, p. 749, § 2.]

§ 7656. [6585.] Ten Hours for Coal Mine Employees Transporting Men.

The provisions of this act shall not apply to, or prohibit engineers, rope-riders, motormen, cagers, or others necessarily employed in transporting men in and out of the mine: Provided, however, that all persons so employed shall not work more than ten (10) hours in any one calendar day: And provided further, that this act shall not be construed to prohibit extra hours of employment underground, necessitated by a weekly change of shift, or where rendered necessary by reason of any accident, or for the purpose of making unavoidable repairs, or for the protection of property or human life. [L. '09, p. 750, § 3.]

"This act": See note to next section.

§ 7657. [6586.] Enforcement of Act.

It shall be the duty of the state inspector of coal mines to enforce the provisions of this act. [L. '09, p. 750, § 4.]

"Act" refers to §§ 7654—7657.

CHAPTER V.

HEALTH AND SAFETY OF EMPLOYEES IN FACTORIES, ETC.

§ 7658. [6587.] Unguarded or Defective Machinery—Use of, Prohibited.

Any person, firm, corporation or association operating a factory, mill or workshop where machinery is used shall provide and maintain in use, belt-shifters or other mechanical contrivances for the purpose of throwing on or off belts on pulleys while running, where the same are practicable with due regard to the nature and purpose of said belts and the dangers to employees therefrom; also reasonable safeguards for all vats, pans, trimmers, cut-off, gang edger, and other saws, planers, cogs, gearings, belting, shafting, coupling, set-screws, live rollers, conveyors, mangles in laundries and machinery of other or similar description, which it is practicable to guard, and which can be effectively guarded with due regard to the ordinary use of such machinery and appliances, and the dangers to employees therefrom, and with which the employees of any such factory, mill or workshop are liable to come in contact while in the performance of their duties; and if any machine or any part thereof, is in a defective condition, and its operation would be extrahazardous because of such defect, or if any machine is not safeguarded as provided in this act, the use thereof is prohibited, and a notice to that effect shall be attached thereto by the employer or inspector immediately on receiving notice of such defect or lack of safeguard, and such notice shall not be removed until said defect has been remedied or the machine safeguarded as herein provided. [L. '07, p. 448, § 1. Cf. L. '03, p. 40, § 1; L. '05, p. 164, § 1.]

"Act" in this and the following sections refers to this chapter.

Cited in 55 Wash. 682; 61 Wash. 37, 31; 76 Wash. 420, 421; 78 Wash. 200; 81 Wash. 57, 58, 122, 139; 65 Wash. 452; 75 Wash. Wash. 89; 83 Wash. 467.

Construction of this act: See *Opsahl v. Northern Pac. R. Co.*, 78 Wash. 197, 138 Pac. 681; *Lauer v. Northern Pac. R. Co.*, 83 Wash. 465, 145 Pac. 606; *Shaw v. Woodland Shingle Co.*, 61 Wash. 56, 111 Pac. 1070.

In an action under the federal act, the failure of the employer to comply with this act cannot be considered as excusing the employee's contributory negligence or assumption of risks: *Lauer v. Northern Pac. R. Co.*, 83 Wash. 465, 145 Pac. 606.

Negligence of Master in failing to comply with this section: See *Remington's Digest, Mast. & Ser.*, § 47; *Johnson v. Tacoma Mill Co.*, 22 Wash. 88, 60 Pac. 53; *Hall v. West & Slade Mill Co.*, 39 Wash. 447, 81 Pac. 915, 4 Ann. Cas. 587; *Hoveland v. Hall Bros. Marine R. etc. Co.*, 41 Wash. 164, 82 Pac. 1090; *Hansen v. Seattle Lumber Co.*, 41 Wash. 349, 83 Pac. 102; *Johnson v. Far West Lumber Co.*, 47 Wash. 492, 92 Pac. 274; *Kreymborg v. Thurston*, 63 Wash. 219, 115 Pac. 77; *Young v. Aloha Lumber Co.*, 63 Wash. 600, 116 Pac. 4; *Burns v. Leudinghaus*, 65 Wash. 448, 118 Pac. 305; *Jones v. Francis*, 70 Wash. 676, 127 Pac. 307; *Mathis v. Western Furniture Mfg. Co.*, 72 Wash. 206, 130 Pac. 94; *Gilbert v. Chicago, Milwaukee & Puget Sound R. Co.*, 75 Wash. 31, 134 Pac. 471; *Shaughnessy v. Northland Steamship Co.*, 94 Wash. 325, 162 Pac. 546, Ann. Cas. 1918C, 655.

Defense of Assumption of Risks, under this section: See *Remington's Digest, Mast. & Ser.*, § 88; *Hall v. West & Slade Mill Co.*, 39 Wash. 447, 81 Pac. 915, 4 Ann. Cas. 587; *Whelan v. Washington Lum. Co.*, 41 Wash. 153, 83 Pac. 98, 111 Am. St. Rep. 1006; *Hoveland v. Hall Bros. Marine R. etc. Co.*, 41 Wash. 164, 82 Pac. 1090; *Druglis v. Northwestern Imp. Co.*, 41 Wash. 398, 83 Pac. 101; *Erickson v. McNeeley & Co.*, 41 Wash. 509, 84 Pac. 3; *Johnston v. Northern Lumber Co.*, 42 Wash. 230, 84 Pac. 627; *Thompson v. Issaquah Shingle Co.*, 43 Wash. 253, 86 Pac. 588; *Miller v. Union Mill Co.*, 45 Wash. 199, 88 Pac. 130; *Pachko v. Wilkeson Coal & Coke Co.*, 46 Wash. 422, 90 Pac. 436; *Johnson v. Far West Lumber Co.*, 47 Wash. 492, 92 Pac. 274; *Benner v. Wallace Lumber & Mfg. Co.*, 55 Wash. 679, 105 Pac. 145, 45 L. R. A. (N. S.) 128; *Anderson v. Pacific National Lumber Co.*, 60 Wash. 415, 111 Pac. 337; *McIntosh v. Saw Mill Phoenix*, 49 Wash. 152, 94 Pac. 930; *Benner v.*

Wallace Lumber & Mfg. Co., 55 Wash. 679, 105 Pac. 145, 45 L. R. A. (N. S.) 128; *Tamura v. Great Northern R. Co.*, 58 Wash. 316, 108 Pac. 774; *Cook v. Danaher Lumber Co.*, 61 Wash. 118, 112 Pac. 245; *Dukette v. Northwestern Woodenware Co.*, 61 Wash. 95, 111 Pac. 1065; *Talkington v. Washington Veneer Co.*, 61 Wash. 137, 112 Pac. 261, 44 L. R. A. (N. S.) 1061; *Young v. Aloha Lumber Co.*, 63 Wash. 600, 116 Pac. 4; *Opsahl v. Northern Pac. R. Co.*, 78 Wash. 197, 138 Pac. 681 (overruled in *Lauer v. Northern Pacific R. Co.*, 83 Wash. 465, 145 Pac. 606); *Lindholm v. Hazel Mill Co.*, 91 Wash. 333, 157 Pac. 998; *Swanson v. Oregon-Washington R. & Navigation Co.*, 92 Wash. 423, 159 Pac. 379.

Sufficiency of Evidence, under this section: See *Remington's Digest, Mast. & Ser.*, § 158; *Crooker v. Pacific Lounge & Mattress Co.*, 29 Wash. 30, 69 Pac. 359; *Erickson v. McNeeley & Co.*, 41 Wash. 509, 84 Pac. 3; *Rector v. Bryant Lumber etc. Mill Co.*, 41 Wash. 556, 84 Pac. 7; *Campbell v. Wheelihan-Weidauer Co.*, 45 Wash. 675, 89 Pac. 161; *Vosberg v. Michigan Lumber Co.*, 45 Wash. 670, 89 Pac. 168; *Noren v. Larson Lumber Co.*, 46 Wash. 241, 89 Pac. 563; *Boyle v. Anderson & Middleton Lumber Co.*, 46 Wash. 431, 90 Pac. 433; *Tergeson v. Robinson Mfg. Co.*, 48 Wash. 294, 93 Pac. 428; *Adams v. Peterman Mfg. Co.*, 47 Wash. 484, 92 Pac. 339; *Barclay v. Puget Sound Lumber Co.*, 48 Wash. 241, 93 Pac. 430, 16 L. R. A. (N. S.) 140; *Ramm v. Hewitt-Lea Lumber Co.*, 49 Wash. 263, 94 Pac. 1081; *Gustafson v. West Lumber Co.*, 51 Wash. 25, 97 Pac. 1094; *Smith v. Hewitt-Lea Lumber Co.*, 55 Wash. 357, 104 Pac. 651; *Dukette v. Northwestern Woodenware Co.*, 61 Wash. 95, 111 Pac. 1065; *Lepper v. Stetson & Post Lumber Co.*, 61 Wash. 523, 112 Pac. 514; *Young v. Aloha Lumber Co.*, 63 Wash. 600, 116 Pac. 4; *Nolan v. Stillwater Lumber Co.*, 65 Wash. 445, 118 Pac. 340; *Rommen v. Empire Furniture Mfg. Co.*, 66 Wash. 48, 118 Pac. 924; *Dolan v. Slade Lumber Co.*, 69 Wash. 22, 124 Pac. 133; *Jensen v. Shaw Show Case Co.*, 76 Wash. 419, 136 Pac. 698.

Duty and liability of master in respect to guarding shafting. 18 Ann. Cas. 652; Ann. Cas. 1914A, 658.

Common practice as the measure of master's duty to guard machinery. 16 L. R. A. (N. S.) 140.

§ 7659. [6588.] Requirements as to Ventilation and Sanitation.

Every factory, mill or workshop where machinery is used and manual labor is exercised by the way of trade for the purposes of gain within an inclosed room (private houses in which the employees live, excepted) shall

be provided in each workroom thereof with good and sufficient ventilation and kept in a cleanly and sanitary state, and shall be so ventilated as to render harmless, so far as practicable, all gases, vapors, dust or other impurities, generated in the course of the manufacturing or laboring process carried on therein; and if in any factory, mill or workshop, any process is carried on in any inclosed room thereof, by which dust is generated and inhaled to an injurious extent by the persons employed therein, conveyors, receptacles or exhaust fans, or other mechanical means, shall be provided and maintained for the purpose of carrying off or receiving and collecting such dust. [L. '05, p. 165, § 2.]

The printed session law omitted one line of the enrolled bill.

Constitutionality of statutes providing for health and safety of employees. 2 Ann. Cas. 780.

§ 7660. [6589.] Safeguards for Hatchways, Elevator Shafts, etc.

The openings of all hoistways, hatchways, elevators and well-holes and stairways in factories, mills, workshops, storehouses, warerooms or stores, shall be protected where practicable, by good and sufficient trap-doors, hatches, fences, gates or other safeguards, and all due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same open that the same may be used. [L. '05, p. 165, § 3.]

Employee's right of action for employer's violation of statute as to guarding elevators and shafts. 15 L. R. A. (N. S.) 784; L. R. A. 1915E, 541.

Liability of master for injuries to

servant in place not sufficiently lighted. 20 Ann. Cas. 2.

Failure to safeguard elevator as actionable wrong under statutes not for plaintiff's benefit. 9 Ann. Cas. 430.

§ 7661. [6590.] Examination of Factories—Certificates of Approval.

It shall be the duty of the commissioner of labor, by himself or his duly appointed deputy, to examine as soon as may be after the passage of this act, and thereafter annually and from time to time, all factories, mills, workshops, storehouses, warerooms, stores and buildings and the machinery and appliances therein contained to which the provisions of this chapter are applicable for the purpose of determining whether they do conform to such provisions, and of granting or refusing certificates of approval, whether requested to do so or not. [L. '05, p. 165, § 4; L. '07, p. 449, § 2.]

See *infra*, § 10838, duties devolve upon director of labor and industries.

See *infra*, § 10893, commissioner of labor abolished.

Cited in 111 Wash. 247.

§ 7662. [6591.] Requests for Inspection—Effect of.

Any person, firm, corporation or association carrying on business to which the provisions of this act are applicable, shall have the right to make written request to said commissioner of labor to inspect any factory, mill or workshop, and the machinery therein used, and any storehouse, wareroom or store, which said applicant is operating, occupying or using, and to issue his certificate of approval thereof; and said commissioner of labor by himself, or his deputy, shall forthwith make

said inspection. Upon receiving such application, the commissioner of labor shall issue to the person making the same, an acknowledgment that such certificate has been applied for, and thirty days after such acknowledgment, by said commissioner of labor, and pending the granting of such certificate, such acknowledgment shall have the same effect as such certificate, till the granting of such certificate by said commissioner of labor: Provided, said applicant has not been notified by an inspector what alterations or repairs are necessary; provided, the commissioner of labor by himself or deputy shall make such examination annually whether requested to do so or not. [L. '05, p. 165, § 5; L. '07, p. 449, § 3.]

"Act" refers to this chapter.

See notes to § 7661.

§ 7663. [6592.] Notification of Defects, by Employees.

Any employee of any person, firm, corporation or association shall notify his employer of any defect in, or failure to guard the machinery, appliances, ways, works and plants, with which or in about which he is working, when any such defect or failure to guard shall come to the knowledge of any said employee, and if said employer shall fail to remedy such defects then said employee may complain in writing to the commissioner of labor of any such alleged defects in or failure to guard the machinery, appliances, ways, works and plants, or any alleged violation by such person, firm, corporation or association, of any of the provisions of this chapter, in the machinery and appliances and premises used by such person, firm, corporation or association, and with or about which such employee is working, and upon receiving such complaint, it shall be the duty of the commissioner of labor, by himself or his deputy, to forthwith make an inspection of the machinery and appliances complained of. [L. '05, p. 166, § 6.]

See notes to § 7661.

§ 7664. [6593.] Certificate of Inspection—Posting—Prima Facie Evidence—Appeal to Arbitrators—Fees—Fund for Special Inspectors.

Whenever upon examination or re-examination of any factory, mill or workshop, store or building, or the machinery or appliances therein to which the provisions of this chapter are applicable, the property so examined and the machinery and appliances therein conform in the judgment of said commissioner of labor to the requirements of this chapter, he shall thereupon issue to the owner, lessee or operator of such factory, mill or workshop or to the owner, lessee or occupant of any such storehouse, wareroom or store, a certificate to that effect, and such certificate shall be prima facie evidence as long as it continues in force of compliance on the part of the person, firm, corporation or association to whom it is issued, with the provisions of this act. Such certificate may be revoked by said commissioner of labor at any time upon written notice to the person, firm, corporation or association holding the same, whenever in his opinion after re-examination, conditions and circumstances have so changed as to justify the revocation thereof. A copy of said certificate shall be kept posted in a conspicuous place on every floor of

all factories, mills, workshops, storehouses, warerooms or store to which the provisions of this act are applicable. If, in the judgment of said commissioner of labor, such factory, mill or workshop, or the machinery and appliances therein contained, or such storehouse, wareroom or store does not conform to the requirements of this act, he shall forthwith, personally or by mail, serve on the person, firm, corporation or association operating or using such machinery or appliances, or occupying such premises, a written statement of the requirements of said commissioner of labor, before he will issue a certificate as hereinbefore provided for; said requirements shall be complied with, within a period of thirty days after said requirements have been served as aforesaid and thereupon the said commissioner of labor shall forthwith issue such certificate; but if the person, firm or corporation operating or using said machinery and appliances or occupying such premises shall consider the requirements of said commissioner of labor unreasonable and impracticable or unnecessarily expensive, he may within ten days after the requirements of said commissioner of labor have been served upon him appeal therefrom or from any part thereof, to three arbitrators to whom shall be submitted the matter and things in dispute, and their findings shall be binding upon said applicant and upon the commissioner of labor. Such appeal shall be in writing, addressed to the commissioner of labor and shall set forth the objections to his requirements, or any part thereof, and shall mention the name of one person who will serve as the representative of said applicant calling for arbitration. Immediately upon the receipt of such notice of appeal, it shall be the duty of the commissioner of labor to appoint a competent person as arbitrator resident in the county from which such appeal comes, and to notify such person so selected, and also the party appealing stating the cause of the arbitration, and the place, date and time of meeting. These two arbitrators shall select the third, and as soon thereafter as practicable, give a hearing on the matters of said appeal, and the findings of these arbitrators by a majority vote, shall be reported to the commissioner of labor, and to the applicant, and shall be binding upon each. The expense of such arbitration shall be borne by the party calling for the arbitration; and if said arbitrators sustain the requirements of said commissioner of labor or any part thereof, said applicant shall within thirty days, comply with the findings of said arbitrators, and thereupon said commissioner of labor shall issue his certificate as hereinbefore provided (in section 7661), but if said arbitrators shall sustain such appeal or any part thereof, the same shall be binding upon said commissioner of labor; and any such person, firm, corporation or association shall within thirty days, after the finding of the board of arbitrators, comply with the requirements of the commissioner of labor, as amended by said arbitrators, if so amended as herein provided for, and thereupon said commissioner of labor shall forthwith issue to any such person, firm, corporation or association, his certificate as provided for in section 7661: Provided, however, that before any certificate shall be issued by said commissioner of labor as provided for in this act, the person, firm, corporation or association which has complied with the provisions of this act, shall pay to the commissioner of labor of the state of Washington, an annual fee of ten dollars (provided that any person, firm,

corporation or association, employing not to exceed five persons in said factory, mill or workshop shall pay a fee of five dollars), and take his receipt therefor: It is further provided, that the withholding of such certificate shall not excuse such person, firm, corporation or association from obtaining the same and paying the required inspection fee, and the person, firm, corporation or association inspected shall likewise be civilly liable for such inspection fee.

Upon presentation of said receipt to said commissioner of labor, or his deputy, he shall forthwith issue said certificate as in this chapter provided. Said fee shall entitle the person, firm, corporation or association paying the same, to any and every inspection of any factory, mill, workshop, storehouse, wareroom or store, and the machinery and appliances contained therein, owned and operated by the party paying said fee, that may be necessary, for a period of one year subsequent to its payment; and all moneys collected for licenses and fines, under the provisions of this act, shall be paid into the state treasury and be converted into a special factory inspection fund, from which special fund shall be paid the deputy factory inspectors required to enforce the provisions of this chapter. Said deputy factory inspectors shall be paid from the special factory inspection fund, upon the presentation of vouchers properly signed by the labor commissioner in the same manner in which other employees of the state are paid. [L. '05, p. 166, § 7; L. '07, p. 450, § 4.]

"This act" refers to this chapter.

See notes to §§ 7658, 7659.

Cited in 60 Wash. 58; 66 Wash. 53; 76 Wash. 422; 81 Wash. 89; 83 Wash. 467.

This section makes the labor commissioner's certificate of approval only *prima facie* evidence of the sufficiency of the

guard, and the question is usually for the jury unless reasonable minds could not differ: *Jensen v. Shaw Show Case Co.*, 76 Wash. 419, 136 Pac. 698.

§ 7665. [6597.] Violation, a Misdemeanor.

Any person, firm, corporation or association who violates or fails to comply with any of the provisions of this chapter or to pay for and obtain the certificate of inspection shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [L. '05, p. 169, § 11; L. '07, p. 453, § 5.]

Criminal Prosecutions: See *Remington's* 43 Wash. 116, 86 Pac. 201; *State v. Erickson*, 45 Wash. 441, 88 Pac. 840. *Digest, Mast. & Ser.*, § 6; *State v. Davis*,

§ 7666. [6598.] Copy of Act to be Kept Posted.

A copy of this chapter together with the name and address of the commissioner of labor, printed in a legible manner, shall be kept posted in a conspicuous place on each floor of every factory, mill, workshop, storehouse, wareroom or store, and at the office of every public and private work to which the provisions of this chapter are applicable, upon the same being supplied to the operators, owners, lessee, or occupants, of such places with sufficient copies thereof by the commissioner of labor. [L. '05, p. 169, § 12.]

Cited in 83 Wash. 467.

CHAPTER VI.

ARBITRATION OF DISPUTES.

Arbitration and award: See *supra*, § 420.

§ 7667. [6599.] Advice by Commissioner—Selection of Board of Arbitration.

It shall be the duty of the state labor commissioner upon application of any employer or employee having differences, as soon as practicable, to visit the location of such differences and to make a careful inquiry into the cause thereof and to advise the respective parties, what, if anything, ought to be done or submitted to by both to adjust said dispute and should said parties then still fail to agree to a settlement through said commissioner, then said commissioner shall endeavor to have said parties consent in writing to submit their differences to a board of arbitration to be chosen from citizens of the state as follows, to wit: Said employer shall appoint one and said employees acting through a majority, one, and these two shall select a third, these three to constitute the board of arbitration and the findings of said board of arbitration to be final. [L. '03, p. 71, § 1.]

See *infra*, § 10838, duties devolve upon director of labor and industries.

See *infra*, § 10893, commissioner of labor abolished.

Cited in 111 Wash. 247.

§ 7668. [6600.] Proceedings of Board—Duties of Commissioner as Chairman.

The proceedings of said board of arbitration shall be held before the commissioner of labor who shall act as moderator or chairman, without the privilege of voting, and who shall keep a record of the proceedings, issue subpoenas and administer oaths to the members of said board, and any witness said board may deem necessary to summon. [L. '03, p. 71, § 2.]

§ 7669. [6601.] Service—By Whom Made.

Any notice or process issued by the board herein created, shall be served by any sheriff, coroner or constable to whom the same may be directed, or in whose hands the same may be placed for service. [L. '03, p. 71, § 3.]

§ 7670. [6602.] Compensation and Expenses of Arbitrators.

Such arbitrators shall receive five dollars per day for each day actually engaged in such arbitration and the necessary traveling expenses to be paid upon certificates of the labor commissioner out of the fund appropriated for the purpose or at the disposal of the bureau of labor applicable to such expenditure. [L. '03, p. 71, § 4.]

§ 7671. [6603.] Failure to Secure Arbitration—Sworn Statement as to Facts, etc., by Parties, for Public Use.

Upon the failure of the labor commissioner, in any case, to secure the creation of a board of arbitration, it shall become his duty to request a

sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the labor commissioner under this provision shall be for public use and shall be given publicly in such newspapers as desire to use it. [L. '03, p. 72, § 5.]

§ 7672. [6604.] Exhaustion of Funds—Either Party may Advance Expenses of Arbitration.

In case the funds herein provided are exhausted and either party to a proposed arbitration shall tender the necessary expenses for conducting said arbitration, then it shall be the duty of the state labor commissioner to request the opposite party to arbitrate such differences in accordance with the provisions of this chapter. [L. '03, p. 72, § 6.]

The appropriation contained in this section is omitted.

CHAPTER VII.

WORKMEN'S COMPENSATION ACT.

§ 7673. [6604-1.] Declaration of Police Power.

The common-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided. [L. '11, p. 345, § 1.]

Cited in 76 Wash. 438, 441; 79 Wash. 404, 501; 80 Wash. 114, 115, 436; 84 Wash. 266, 584, 585; 85 Wash. 286; 87 Wash. 254, 628; 89 Wash. 88, 635, 638; 91 Wash. 183, 466, 592; 92 Wash. 30, 45, 47; 94 Wash. 329, 333, 336, 533, 534; 99 Wash. 176, 177; 100 Wash. 675; 101 Wash. 632; 102 Wash. 558, 559; 103 Wash. 244; 104 Wash. 179; 108 Wash. 72; 109 Wash. 473, 525; 111 Wash. 249.

The title to this act "relating to the compensation of injured workmen" and "abolishing the doctrine of negligence as a ground for the recovery of damages against employers," is broad enough to

embrace provisions abolishing all rights of civil action for such injuries, whether against employers or third persons: *Peet v. Mills*, 76 Wash. 437, 136 Pac. 685, Ann. Cas. 1915D, 154, L. R. A. 1916A, 358.

Construction and Application of Workmen's Compensation Acts: See *Remington's Digest*, Mast. & Ser., § 20-1; *Wendt v. Industrial Ins. Com.*, 80 Wash. 111, 141 Pac. 311, 5 N. C. C. A. 790; *Hillestad v. Industrial Ins. Com.*, 80 Wash. 426, 141 Pac. 913, Ann. Cas. 1916B, 789, 6 N. C. C. A. 763; *Zappala v. Industrial Ins. Com.*, 82 Wash. 314, 144 Pac. 54,

L. R. A. 1916A, 295; *Replogle v. Seattle School District No. 1*, 84 Wash. 581, 147 Pac. 196; *Guerrieri v. Industrial Ins. Com.*, 84 Wash. 266, 146 Pac. 608, 8 N. C. C. A. 440; *State ex rel. Jarvis v. Daggett*, 87 Wash. 253, 151 Pac. 648, L. R. A. 1916A, 446, 10 N. C. C. A. 688; *Remsnider v. Union Savings & Trust Co.*, 89 Wash. 87, 154 Pac. 135, Ann. Cas. 1917D, 40; *Collins v. Terminal Transfer Co.*, 91 Wash. 463, 157 Pac. 1092; *Stertz v. Industrial Ins. Com.*, 91 Wash. 588, 158 Pac. 256, Ann. Cas. 1918B, 354; *Shaughnessy v. Northland Steamship Co.*, 94 Wash. 325, 162 Pac. 546, Ann. Cas. 1918B, 655; *State v. Powles & Co.*, 94 Wash. 416, 162 Pac. 569; *State v. Postal Telegraph-Cable Co.*, 101 Wash. 630, 172 Pac. 902; *Carlson v. Mock*, 102 Wash. 557, 173 Pac. 637; *Welden v. Skinner & Eddy Corp.*, 103 Wash. 243, 174 Pac. 452.

See, also, *Reynolds v. Day*, 79 Wash. 499, 140 Pac. 681, L. R. A. 1916A, 432, 5 N. C. C. A. 814.

— **Exempting Interstate Railways Construction:** *Spokane & Inland Empire R. Co. v. Wilson*, 104 Wash. 171, 176 Pac. 34.

— **Admiralty Jurisdiction:** *Puget Sound Bridge & Dredging Co. v. Industrial Ins. Com.*, 105 Wash. 272, 177 Pac. 788.

— **Injury to Servant—Maritime Work of Stevedore:** *Lund v. Griffiths & Sprague Stevedoring Co.*, 108 Wash. 220, 183 Pac. 123.

— **"Work-shop"—Statutes:** *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 Pac. 339.

— **Extrahazardous Employment—Operating Stencil Imprinter:** *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 Pac. 339.

— **"Plant"—City Bridge:** *Zenor v. Spokane & Inland Empire R. Co.*, 109 Wash. 471, 186 Pac. 849.

— **Persons Protected—Unlawful Employment of Minors—Statutes:** *Rasi v. Howard Mfg. Co.*, 109 Wash. 524, 187 Pac. 327.

— **Railroad Employees—Interstate Commerce—Construction:** *Luby v. Industrial Ins. Com.*, 112 Wash. 153, 191 Pac. 855.

Remedies Under Workmen's Compensation Acts: See *Remington's Digest*, Mast. & Ser., § 121-2; *Boyd v. Pratt*, 72 Wash. 306, 130 Pac. 371; *State ex rel. Pratt v. Seattle*, 73 Wash. 396, 132 Pac. 45; *Peet v. Mills*, 76 Wash. 437, 136 Pac. 685, Ann. Cas. 1915D, 154, L. R. A. 1916A, 358; *Acres v. Frederick & Nelson*, 79 Wash. 402, 140 Pac. 370, 5 N. C. C. A. 557; *State v. Chicago, Milwaukee & Puget Sound R. Co.*, 80 Wash. 435, 141 Pac. 897; *Sinnes v. Daggett*, 80 Wash. 673, 142

Pac. 5; *Ross v. Erickson Construction Co.*, 89 Wash. 634, 155 Pac. 153, L. R. A. 1916F, 319; *Stertz v. Industrial Ins. Com.*, 91 Wash. 588, 158 Pac. 256, Ann. Cas. 1918B, 354; *Shaughnessy v. Northland Steamship Co.*, 94 Wash. 325, 162 Pac. 546, Ann. Cas. 1918B, 655; *State v. Powles & Co.*, 94 Wash. 416, 162 Pac. 569; *Chalmers v. Industrial Ins. Com.*, 94 Wash. 490, 162 Pac. 576; *Marney v. Industrial Ins. Dept.*, 98 Wash. 483, 167 Pac. 1085; *Ray v. Industrial Ins. Com.*, 99 Wash. 176, 168 Pac. 1121; *O'Brien v. Industrial Ins. Dept.*, 100 Wash. 674, 171 Pac. 1018; *Kline v. Industrial Ins. Com.*, 101 Wash. 365, 172 Pac. 343; *State v. Postal Telegraph-Cable Co.*, 101 Wash. 630, 172 Pac. 902; *Parker v. Industrial Ins. Dept.*, 102 Wash. 54, 172 Pac. 830.

See, also:

Costs—Expert Witness Fees: *Nelson v. Industrial Ins. Dept.*, 104 Wash. 204, 176 Pac. 15.

— **Evidence—Sufficiency:** *Nelson v. Industrial Ins. Dept.*, 104 Wash. 204, 176 Pac. 15.

— **"Dependents"—"Widow":** *Meton v. Industrial Ins. Dept.*, 104 Wash. 652, 177 Pac. 696.

— **Award by Single Member of Commission:** *Foster v. Industrial Ins. Com.*, 107 Wash. 400, 181 Pac. 912.

— **Adoption of Fixed Schedule—Capriciousness—Review:** *Foster v. Industrial Ins. Com.*, 107 Wash. 400, 181 Pac. 912.

— **Permanent Partial Disability—Award for Further Accident—Statutes—Construction:** *Biglan v. Industrial Ins. Com.*, 108 Wash. 8, 182 Pac. 934.

— **Remedies:** *Freyman v. Day*, 108 Wash. 71, 182 Pac. 940.

— **Retroactive Effect:** *Talbot v. Industrial Ins. Com.*, 108 Wash. 231, 183 Pac. 84, 187 Pac. 410.

— **Partial Disability—Recovery for Difference in Earning Power—Statutes—Construction:** *Parker v. Industrial Ins. Com.*, 108 Wash. 235, 183 Pac. 82.

— **Amendment of Act:** *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 Pac. 339.

— **Award—Appeal—Dismissal—Effect of Voluntary Nonsuit:** *Maddox v. Industrial Ins. Com.*, 113 Wash. 137, 193 Pac. 231.

Constitutionality of workmen's compensation and industrial insurance acts: Ann. Cas. 1912B, 174; Ann. Cas. 1915A, 247; Ann. Cas. 1916B, 1286; Ann. Cas. 1917E, 401, 839; Ann. Cas. 1918B, 611; 34 L. R. A. (N. S.) 162; 37 L. R. A. (N. S.) 466; L. R. A. 1916A, 409; L. R. A. 1917D, 51.

§ 7674. [6604-2.*] Extrahazardous Employments.

There is a hazard in all employment, but certain employments have come to be, and to be recognized as being, inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extrahazardous" wherever used in this act, to wit: factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gasworks, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power, quarries, engineering works, logging, lumbering, and shipbuilding operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads; general warehouse and storage; transfer, drayage and hauling; warehousing and transfer; fruit warehouse and packing-houses. If there be or arise any extrahazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 7676.

The director of labor and industries through and by means of the division of industrial insurance shall have power, after hearing had upon its own motion, or upon the application of any party interested, to declare any occupation or work to be extrahazardous and to be under this act. The director of labor and industries shall fix the time and place of such hearing, and shall cause notice thereof to be published once at least ten days before the hearing in at least one daily newspaper of general circulation, published and circulated in each city of the first class in this state. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any order issued by the director of labor and industries after hearing had. Any person affected shall have the right to appear and be heard at any such hearing. Any order, finding or decision of the director of labor and industries made and entered under the foregoing provisions of this act shall be subject to review by the courts within the time and in the manner specified in section 7697 and not otherwise. [L. '21, p. 719, § 1; L. '19, p. 340, § 1; L. '11, p. 346, § 2.]

See *infra*, § 7702, application of this section.

Cited in 80 Wash. 114, 115; 84 Wash. 267; 87 Wash. 628; 94 Wash. 333, 336, 337, 417, 418; 100 Wash. 685; 101 Wash. 634, 636; 108 Wash. 72, 481.

Extrahazardous Employments: The operation of a passenger or freight elevator is not an extrahazardous employment: *Guerieri v. Industrial Ins. Com.*, 84 Wash. 266, 146 Pac. 608.

A person whose usual or regular employment, that of a truck driver and

storekeeper's helper, was not extrahazardous, but whose duty it was when called upon, to assist and work under the direction of an electrician in the installation of electric motors, classed as an extrahazardous employment is subject to the act: *Replogle v. Seattle School Dist.*, 84 Wash. 581, 147 Pac. 196.

The legislature having classed the work of construction of telegraph and telephone plants as extrahazardous, the same

is conclusive of the fact, especially since judicial notice cannot be taken to the contrary: *State v. Postal Telegraph-Cable Co.*, 101 Wash. 630, 172 Pac. 902.

A carpenter engaged in a department store who was killed while trying to turn on electric power in the workshop was engaged in extrahazardous employment: *Wendt v. Industrial Ins. Com.*, 80 Wash. 111, 141 Pac. 311.

A carpenter on the construction of a shipbuilding plant who, on his way to the toilet, passed near a galvanizing tank in the vicinity of his work when the tank exploded, is engaged in an "extrahazardous" employment within the industrial insurance act, and was injured at the employer's plant in the course of his employment: *Welden v. Skinner & Eddy Corp.*, 103 Wash. 243, 174 Pac. 452.

The operation of a power-driven machine to make zinc plates or stencils for printing gas bills, by a woman clerk employed in the general office at clerical work for the larger part of the time, is "extrahazardous," within this act, and it is immaterial that, when the machine was

in perfect order, injury was practically impossible: *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 Pac. 339.

Under this section, providing that the Workmen's Compensation Act is intended to apply to all extrahazardous occupations, and that "if there be or arise" any extrahazardous occupation or work other than those enumerated, it shall come under the act and its rate of contribution be determined by the industrial insurance commission, no power is delegated to the commission to decide as a legislative determination that an occupation other than those enumerated is extrahazardous, in the absence of any express delegation of such power: *State v. Powles & Co.*, 94 Wash. 416, 162 Pac. 569.

Occupations or employments within purview of Workmen's Compensation Act. *Ann. Cas.* 1917D, 4, 33, 38, 39, 42; *L. R. A.* 1916A, 115, 246; *L. R. A.* 1917D, 145; *L. R. A.* 1918F, 201.

Construction and effect of workmen's compensation acts generally. *L. R. A.* 1916A, 23; *L. R. A.* 1917D, 89.

§ 7675. [6604-3.*] Definitions.

In the sense of this act words employed mean as here stated, to wit: Factories mean undertaking in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern. Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing, or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control. Mill means any plant, premises, room or place wherein machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers. Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground. Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes. Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals, electric, steam or water-power plants, telegraph and telephone plants and lines, electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used, except when otherwise expressly stated. Employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this state in any

extrahazardous work or who contracts with another to engage in extrahazardous work. Workman means every person in this state, who is engaged in the employment of an employer coming under this act whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: Provided, however, that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the pay-roll at a salary or wage not less than the average salary or wage named in such pay-roll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman: Provided, that no such employer or the beneficiaries or dependents of such employer shall be entitled to benefits under this act unless the director of labor and industries prior to the date of the injury has received notice in writing of the fact that such employer is being carried upon the pay-roll prior to the date of the injury as the result of which claims for compensation are made. Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz.: invalid child over the age of eighteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, grand-daughter, brother, sister, half-sister, half-brothers, niece, nephew, who at the time of the accident are dependent in whole or in part for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or mother, not residing within the United States at the time of the accident, are not included. Beneficiary means a husband, wife, child or dependent of a workman in whom shall vest a right to receive payment under this act. Invalid means one who is physically or mentally incapacitated from earning. The word "child" as used in this act, includes a posthumous child, a stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury. The words "injury" or "injured" as used in this act refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease. The term "educational standard" shall mean

such standards as the supervisor of safety shall make for the purpose of educating and training both employer and workman in the appreciation and avoidance of danger, and in the maintenance and proper use of safe place and safety device standards. [L. '21, p. 720, § 2; L. '19, p. 342, § 2; L. '17, p. 474, § 1; L. '11, p. 346, § 3.]

See *infra*, § 7702, application of this section.

Cited in 80 Wash. 114, 115, 429, 434; 82 Wash. 315; 84 Wash. 267, 268, 585; 91 Wash. 592, 598; 100 Wash. 686; 101 Wash. 634; 102 Wash. 559, 561; 104 Wash. 658; 108 Wash. 482; 109 Wash. 473.

It does not follow from the fact that a telegraph company is an agent of the United States through its acceptance of the provisions of the act of Congress, July 24, 1866 (U. S. Rev. Stats., §§ 5263—5269), and the building of post roads, that the industrial insurance provisions for the compensation of employees in the construction of the system within this state is either a tax upon or an attempt to regulate the business of the company, since it could not have been intended that such companies owed no obedience to state laws, and since the imposition is part of the cost of construction and not a tax upon the industry nor in the nature of a license tax: *State v. Postal Telegraph-Cable Co.*, 101 Wash. 630, 172 Pac. 902.

"Plant or Premises."—From findings that defendant was doing a general public warehouse, dock and wharf business, it will be inferred that the dock, wharf and warehouse was a single plant or structure, and when coupled with a finding that the work in the warehouse was extrahazardous, it will be assumed that the warehouse was the superstructure of a "dock" or "wharf," and that the work was not exempted as work in a "private warehouse": *O'Brien v. Industrial Ins. Dept.*, 100 Wash. 674, 171 Pac. 1018.

Giving a liberal construction to the act, the "plant" of a street railway company does not include its street-car tracks in a city street; hence its employee, run down by an automobile while engaged in oiling the tracks, is entitled to make the election: *Carlson v. Mock*, 102 Wash. 557, 173 Pac. 637.

A city bridge over wires and tracks of an electric railway company, over which the city, for the purpose of repairs, has exclusive control, is a part of the "plant or premises" of the city within the meaning of this section; so that the act applies to a bridge carpenter injured by contact with the electric wires of the company while engaged in repairing the bridge: *Zenor v. Spokane & Inland Empire R. Co.*, 109 Wash. 471, 186 Pac. 849.

Factory or Workshop.—A gas company's general office for clerical work in

which a clerk operated a power-driven machine to make zinc plates or stencils for printing gas bills is a "factory" or workshop, within the meaning of this section, precluding actions for personal injuries by employees: *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 Pac. 339.

Workmen Within the Act.—The relation of master and servant does not exist between father and son, within the meaning of this section, where it appears that a son, thirteen years of age, who desired to go to work in his father's shingle-mill as a packer, was allowed to go to work driving shingle-bolts on a creek on the promise that later he could have the packer's job, there being nothing said about compensation; since, in the case of father and minor child, there must be clear proof of a contractual relation: *Hillestad v. Industrial Ins. Com.*, 80 Wash. 426, 141 Pac. 913, Ann. Cas. 1916B, 789, 6 N. C. C. A. 763.

An action cannot be maintained by an employee for injuries sustained in another state while working in an extrahazardous employment (mining) in the absence of allegation or proof as to the laws of such state, which presumptively are the same as our own, withdrawing relief for such injuries from private controversy: *Freyman v. Day*, 108 Wash. 71, 182 Pac. 940.

A girl under sixteen years of age employed in a factory without any permit in violation of section 2447, *supra*, is nevertheless a "workman" within the provisions of the industrial insurance act, withdrawing all civil remedies for personal injuries to workmen in extrahazardous employment; especially in view of § 7681, *infra*, recognizing that a child less than the maximum age is a workman within the meaning of the act: *Rasi v. Howard Mfg. Co.*, 109 Wash. 524, 187 Pac. 327.

An injured workman, compensated by the act, cannot maintain an action for malpractice aggravating his injuries, against his master and the physician; but the act does not bar an action upon an accident policy: *Ross v. Erickson Constr. Co.*, 89 Wash. 634, 155 Pac. 153, L. R. A. 1916F, 319.

Dependents.—One who lived with deceased as his wife, believing herself to be lawfully married, is not a "dependent" of the deceased, as defined by this

section specifying "widows" and certain relatives as within the definition: *Meton v. Industrial Ins. Dept.*, 104 Wash. 652, 177 Pac. 696.

Fortuitous Event.—A rule of the industrial insurance commission that "hernia coming on while a man was following his usual work is not an accident" does not prevent recovery of compensation by an employee who was following his usual work, and hernia resulted from a fortuitous event or accident to which the result might be directly traceable: *Zappala v. Industrial Ins. Com.*, 82 Wash. 314, 144 Pac. 54, L. R. A. 1916A, 295.

A rupture, sustained while engaged in moving a heavily loaded truck, which ran harder than usual, whereupon the employee exerted all his strength and gave a jerk, is a "fortuitous event" within the meaning of this section: *Zappala v. Industrial Ins. Com.*, 82 Wash. 314, 144 Pac. 54, L. R. A. 1916A, 295.

The employment of the word "accident" is a substitute for "fortuitous event" and cannot be construed as limit-

ing the right of compensation: *Stertz v. Industrial Ins. Com.*, 91 Wash. 588, 158 Pac. 256, Ann. Cas. 1918B, 354.

Meaning of term "plant" as used in Workmen's Compensation Act. Ann. Cas. 1917A, 323.

Who is "workman" within meaning of Workmen's Compensation Act. Ann. Cas. 1913C, 28; Ann. Cas. 1916B, 793; Ann. Cas. 1918B, 704.

Who is "dependent" within Workmen's Compensation Act. Ann. Cas. 1913E, 480; Ann. Cas. 1918B, 479; L. R. A. 1916A, 121, 163, 248; L. R. A. 1917D, 157; L. R. A. 1918F, 483.

"Dependency" within Workmen's Compensation Act. 13 A. L. R. 686.

What is "mine" within the meaning of Workmen's Compensation Acts. 11 A. L. R. 154.

Employment in workshop as within compensation act. Ann. Cas. 1917D, 18, 42.

§ 7676. [6604-4.*] Schedule of Contribution.

Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total pay-roll for that year, to wit: (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

CONSTRUCTION WORK.

Tunnels; bridges; trestles; subaqueous works; ditches and canals (other than irrigation without blasting); dock excavation; fire-escapes; sewers; house-moving; house wrecking065
Iron, or steel frame structures or parts of structures080
Electric light or power plants or systems; telegraph or telephone systems; pile-driving; steam railroads050
Steeple, towers or grain elevators, not metal frames; dry-docks without excavation; jetties; breakwaters; chimneys; marine railways; waterworks or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters050
Steam-heating plants; tanks; water-towers or windmills, not metal frames040
Shaft-sinking060
Concrete buildings; freight or passenger elevators; fire-proofing of buildings; galvanized iron or tin works; gasworks, or systems; marble, stone or brick work; road-making with blasting; roof work; safe-moving; slate work; outside plumbing work; metal smokestacks or chimneys050

Excavations not otherwise specified; blast furnaces040
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings.....	.035
Ship or boat building or wrecking with scaffolds; floating docks045
Carpenter work not otherwise specified035
Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; mill or ship-wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors; foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified030
Drilling wells; installing electrical apparatus or fire-alarm systems in buildings; house-heating or ventilating systems; glass setting; building hothouses; lathing; paper-hanging; plastering; inside plumbing; wooden stair building; road-making020

OPERATION (INCLUDING REPAIR WORK) OF

(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks..	.050
Electric light or power plants; interurban electric railroads not using third rail system; quarries040
Street railways, all employees; telegraph or telephone systems; stone-crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries030
Mines, other than coal; steam-heating or power plants025
Grain elevators; laundries; waterworks; paper or pulp mills; garbage works020

FACTORIES USING POWER DRIVEN MACHINERY.

Stamping tin or metal.....	.045
Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw-mills; shingle-mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel, keg, pail; basket; tub; woodenware or wooden fibre ware; rolling-mills; making steam shovels or dredges; tanks, water-towers; asphalt, building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra; creosoting works; pile treating works025
Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not other-	

wise specified; hardware; tile, brick; terra cotta; fire-clay; pottery, earthen ware; porcelain ware; peat fuel; briquettes020
Breweries; bottling works; boiler works; foundries; machine-shops not otherwise specified020
Cordage; working in foodstuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified015
Making jewelry, soap, tallow, lard, grease, condensed milk015
Creameries; printing; electrotyping; photo-engraving; engraving, lithographing015

MISCELLANEOUS WORK.

Stevedoring; longshoring030
Operating stockyards, with or without railroad entry; packing-houses025
Wharf operation; artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified.....	.020
Theater stage employees015
Fireworks manufacturing050
Powder works100

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the pay-roll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual pay-roll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day, or who shall resume operations in any work or plant after the final adjustment of his pay-roll in connection therewith, shall, before so commencing or resuming operations, as the case may be, notify the commission of such fact, accompanying such notification with an estimate of his pay-roll for the initial year or portion thereof, and shall make payment of the premium on such estimated pay-roll for the first three months of operations. Every such employer shall be liable for a premium of at least three dollars irrespective of the amount of his pay-roll. An adjustment upon such pay-roll shall be made as in other cases.

Every employer within the provisions of this act shall on or before the fifteenth day of January, the fifteenth day of May and the fifteenth day of September of each year furnish the department with a true and accurate pay-roll showing the aggregate number of work days, that is men-days, during which workmen were employed by him during the four preceding calendar months, the total amount paid to such workmen during said four months, and a segregation of employment in the different classes provided in this act. The sufficiency of such statement shall be subject to the approval of the industrial insurance commission.

Every employer shall keep at his place of business a record of his employment from which the above information may be obtained and such record shall at all times be open to the inspection of the commissioners or the traveling auditors, agents or assistants of the department, as provided in section 7690.

In all cases where partners or other persons are excluded on the pay-roll such statement shall state both the names and occupations of the parties excluded and no such persons shall be entitled to compensation unless notice in writing that such excluded person has been included is received by the department prior to the date of injury to such person. Such employer shall at the time of reporting his pay-roll also state the names and addresses of any contractor or subcontractor operating for or under him.

Every person, firm or corporation who shall fail to keep such record or fail to make such report in the manner and at the time herein provided shall be subject to a penalty of one hundred dollars (\$100) for each such offense, to be collected by civil action in the name of the state and paid into the accident fund.

Every employer who shall fail to furnish an estimated pay-roll and make payment as above provided shall be liable to a penalty in three times the amount of the premium on such pay-roll, to be collected in a civil action in the name of the state, and paid into the accident fund. The commission may waive the whole or any part of such penalty.

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the first day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: Provided, any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund. The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates named in this section are subject to future adjustment by the industrial insurance department, in accordance with any relative increase or decrease in hazard shown by experience, and if in the adjustment of the industrial insurance department the moneys paid into the fund of any class or classes shall insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange or consolidate

such class or classes, making such adjustment or transfer of funds as it may deem proper.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempting to make any such deduction shall be a gross misdemeanor. The industrial insurance commission shall on or before the first day of January, 1920, and annually thereafter make corrections of classifications as between classes of industries if and as experience shall show error or inaccuracy therein. From the original classification or premium rating or any change made therein any employer claiming to be aggrieved may upon application have a hearing before the industrial insurance commission upon notice to the interested parties and in the manner provided in section 7697 a review by the courts. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

For the purpose of such payment and making good of deficit the particular classes of industry shall be as follows:

CONSTRUCTION WORK.

Class 1. Tunnels; sewer, shaft sinking; drilling wells.

Class 2. Bridges; millwrighting; trestles, steeples, towers or grain elevators not metal framed; tanks; water-towers; windmills not metal framed.

Class 3. Subaqueous works; canal other than irrigation or docks with or without blasting; pile-driving; jetties; breakwaters; marine railways.

Class 4. House-moving; house-wrecking; safe-moving.

Class 5. Iron or steel frame structures or parts of structures; fire-escapes; erecting fireproof doors or shutters; blast furnaces; concrete chimneys; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; marble, stone or brick work; roof work; slate work; plumbing work; metal smokestacks or chimneys; advertising signs; ornamental metal work on buildings; carpenter work not otherwise specified; marble, stone or tile setting; mantel setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or foundations; glass-setting; building hothouses; lathing; paper-hanging; plastering; wooden stair building.

Class 6. Electric light and power plants or systems, telegraph or telephone systems; cable or electric railways with or without rock work or blasting; waterworks or systems; steam-heating plants; gasworks or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire-alarm systems in buildings; house-heating or ventilating systems.

Class 7. Steam railroads; logging railroads.

Class 8. Road-making; street or other grading; concrete laying in street paving; asphalt laying.

Class 9. Ship or boat building with scaffold; shipwrighting; ship or boat rigging; floating docks.

OPERATIONS (INCLUDING REPAIR WORK) OF

Class 10. Logging; sawmills; shingle-mills; lath-mills; mast and spars with or without machinery.

Class 12. Dredges; dry or floating docks.

Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.

Class 14. Street railways.

Class 15. Telegraph systems; telephone systems.

Class 16. Coal mines.

Class 17. Quarries; stone crushing; mines other than coal.

Class 18. Blast furnaces; smelters; rolling-mills.

Class 19. Gasworks.

Class 20. Steamboats; tugs; ferries.

Class 21. Grain elevators.

Class 22. Laundries.

Class 23. Waterworks.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

FACTORIES (USING POWER-DRIVEN MACHINERY).

Class 26. Stamping tin or metal.

Class 27. Bridge work; making steam shovels or dredges; tanks; water-towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage; staves; veneer; box; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; woodware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.

Class 30. Asphalt.

Class 31. Cement; stone with or without machinery; building material not otherwise specified.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

Class 34. Iron, steel, copper, zinc, brass or lead articles in wares; hardware; boiler-works; foundries; machine-shops not otherwise specified.

Class 35. Tile; brick; terra cotta; fire-clay; pottery; earthen ware; porcelain ware.

Class 36. Peat fuel; briquettes.

Class 37. Breweries; bottling works.

Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

Class 39. Working in foodstuffs, including oils, fruits, vegetables.

Class 40. Condensed milk, creameries.

Class 41. Printing; electrotyping; photo-engraving; engraving; lithographing; making jewelry.

Class 42. Stevedoring; longshoring; wharf operation.

Class 43. Stockyards; packing-houses; making soap, tallow, lard, grease; tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

Class 45. Theater stage employees.

Class 46. Fireworks manufacturing; powder works.

Class 47. Creosoting works; pile treating works.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards. In computing the pay-roll the entire compensation received by every workman employed in extrahazardous employment shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise. [L. '19, p. 345, § 3; L. '17, p. 477, § 2; L. '15, p. 674, § 1. Cf. L. '11, p. 349, § 4.]

See *infra*, § 7702, application of this section.

Cited in 80 Wash. 114, 115, 429, 438—441; 84 Wash. 267, 268, 585; 87 Wash. 256; 94 Wash. 419; 108 Wash. 482.

ELEVATORS.—The use of the words "passenger and freight elevators" in this section, under the classification of "construction work," shows that the statute means those engaged in the manufacture

or construction of freight and passenger elevators; especially in view of the fact that the schedule of rates to be paid does not specifically cover passenger or freight elevators, but does include the operation of grain elevators: *Guerrieri v. Industrial Ins. Com.*, 84 Wash. 266, 146 Pac. 608, 8 N. C. C. A. 440.

§ 7677. Temporary Employer.

Every employer who after June 30, 1921, shall for the first time since June 30, 1918, engage in any extrahazardous work shall be known as a temporary employer, and shall remain so for the period of one year following the commencement of such work. Each temporary employer shall contribute to the accident fund on the basis of the class rate for the class or class subdivision to which he shall belong increased thirty-three and one-third per cent. At the end of the first year of his operations he shall cease to be a temporary employer if he has paid his aforesaid contribution into the accident fund. In each case where the accident cost to the fund for the first year's operations of any temporary employer, who shall so cease to be a temporary employer, shall not exceed his contribution, the said thirty-three and one-third per cent increase shall be refunded or credited to him out of the accident fund. [L. '21, p. 724, § 3.]

§ 7678. County Assessor to Make Annual List of Employers.

It shall be the duty of the county assessor of each of the counties of the state each year to make a list upon blanks to be furnished by the industrial insurance department of all employers within his county who are engaged in extrahazardous industries as defined by this act, and to forward such list of extrahazardous employments and industries to

the industrial insurance department on or before the first day of May of each and every year. [L. '21, p. 724, § 4.]

See *infra*, §§ 7703, 10836, duties of industrial insurance department devolve upon director of labor and industries.

See *infra*, § 10893, industrial insurance department abolished.

§ 7679. [6604-5.*] Schedule of Awards.

Each workman who shall be injured whether upon the premises or at the plant, or he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

COMPENSATION SCHEDULE.

(a) Where death results from the injury the expenses of burial not to exceed seventy-five dollars (\$75) in any case where the deceased was an unmarried man, or one hundred dollars in any case where the deceased left a widow or an orphan child or children and

(1) If the workman leaves a widow or invalid widower, a monthly payment of thirty dollars (\$30) shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur, and the surviving spouse shall also receive five dollars (\$5) per month for each child of the deceased under the age of sixteen years at the time of the occurrence of the injury until such minor child shall reach the age of sixteen years. An invalid child over sixteen years of age shall be here and in paragraphs (2), (3), and (4) of subdivision (a), and in paragraphs (2) and (3) of subdivision (b), and in subdivision (c) and in paragraphs (1) and (3) but not in paragraph (2) of subdivision (d) considered to be a child under sixteen years of age until such invalid child shall arrive at the age of eighteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed fifty dollars (\$50): Provided, that in addition to the monthly payments above provided for, a surviving widow of any such deceased workman shall be forthwith paid the sum of two hundred and fifty dollars (\$250) in any case where the commission shall be satisfied and shall make a record in their office a finding that the burial expenses have not exceeded and shall not exceed the amount above specified for burial expenses; and further, that no part of said additional payment can be diverted to the payment of burial expenses.

Upon remarriage of a widow she shall receive once and for all, a lump sum of two hundred forty dollars (\$240), but the monthly payment for the child or children shall continue as before.

(2) If the workman leave no wife or husband, but a child or children under the age of sixteen years, a monthly payment of ten dollars (\$10) shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed forty dollars (\$40), and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed twenty dollars (\$20) per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty dollars (\$20) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event of a surviving spouse receiving monthly payment shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased one hundred per cent, but the total to all children shall not exceed the sum of forty dollars (\$40) per month.

(b) Permanent total disability means the loss of both legs, or arms, of one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of thirty dollars (\$30).

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of thirty dollars (\$30). If the husband is not an invalid, the monthly payment of thirty dollars (\$30) shall be reduced to fifteen dollars (\$15).

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, having any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars (\$5) for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed fifty dollars (\$50).

(4) In case of total permanent disability, if the character of the injury is such as to render the workman so physically helpless as to require the services of a constant attendant, the monthly payment to such workman shall be increased twenty dollars (\$20) per month so long as such requirement shall continue, but such increase shall not obtain or be operative while the workman is receiving care under or pursuant to any of the provisions of section 7712 to 7725, inclusive.

(c) If the injured workman die, during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower,

or child under the age of sixteen years, the surviving widow or invalid widower shall receive thirty dollars (\$30) per month until death or remarriage, to be increased five dollars (\$5) per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars (\$10) per month until arriving at the age of sixteen years. The total combined monthly payments under this paragraph shall in no case exceed fifty dollars (\$50). Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

An invalid child while being supported and cared for in a state institution shall not receive compensation under this act.

(d) (1) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply, so long as the total disability shall continue, (2) but if the injured workman has a wife or husband and have no child or have a wife or husband with, or being a widow or widower with one or more children under the age of sixteen years, the compensation for the case during the first six months or such lesser period of time as the total temporary disability shall continue, shall be per month as follows, to wit: Injured workman whose husband is not an invalid, twenty-two and fifty one-hundredth dollars (\$22.50); injured workman having one child, whose husband is not an invalid, thirty dollars (\$30); injured workman having two children, whose husband is not an invalid, thirty-seven and fifty one-hundredth dollars (\$37.50); injured workman having three children, whose husband is not an invalid, forty-five dollars, (\$45); injured workman having four or more children, whose husband is not an invalid, fifty-two and fifty one-hundredth dollars (\$52.50); injured workman with wife or invalid husband and no child, thirty-seven and fifty one-hundredth dollars (\$37.50); injured workman with a wife or invalid husband and one child, or being a widow or widower and having one child, forty-five dollars (\$45); injured workman with a wife or invalid husband and two or more children, or being a widow or widower and having two or more children, fifty-two and fifty one-hundredth dollars (\$52.50). (3) If such temporary total disability shall endure longer than said six months' period, the schedule of compensation contained in paragraphs (1), (2), and (3) of the foregoing subdivision (b) shall at the end of said six months' period again obtain. (4) As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

(e) There is hereby created in the office of the state treasurer a fund to be known and designated as the reserve fund out of which shall be made the payments specified in this section for all cases of death or permanent total disability including future payments to be made for the cases of that character which have heretofore arisen. Into the reserve fund

there shall be forthwith placed all unexpended funds, in cash or invested, heretofore set aside for cases requiring a reserve. For every case resulting in death or permanent total disability hereafter arising it shall be the duty of the department to make transfer on their books from the accident fund of the proper class to the reserve fund of that class a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this section provided to be made for the case. Such annuities shall be based upon tables to be prepared for that purpose by the state insurance commissioner and by him furnished to the state treasurer, calculated upon standard mortality tables with an interest assumption of four (4) per cent per annum.

The department shall notify the state treasurer from time to time of such transfers as a whole and the state treasurer shall invest the reserve in either state capitol building bonds issued to take up capitol building warrants now outstanding, or in the class of securities provided by law for the investment of the permanent school fund, and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. The department shall, on October 1st of each year, apportion the interest or other earnings of the reserve fund as certified to it by the state treasurer, to the various class reserve funds according to the average class balance for the preceding year. As soon as possible after October 1st, of each year beginning in the year 1918, the state insurance commissioner shall expert the reserve fund of each class to ascertain its standing as of October 1st, of that year, and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to that fund. He shall promptly report the result of his examination to the department and to the state treasurer in writing not later than December 31st. If the report show that there was on said October 1st, in the reserve fund of any class in cash or at interest a greater sum than the then annuity value of the outstanding pension obligations of that class, the surplus shall be forthwith turned over to the accident fund of that class, but if the report show the contrary condition of any class reserve, the deficiency shall be forthwith made good out of the accident fund of that class. The state treasurer shall keep accurate account of the reserve fund and the investment and earnings thereof, to the end that the total reserve fund shall at all times, as near as may be, be properly and fully invested, and to meet current demands for pension or lump sum payments may, if necessary, make temporary loans to the reserve fund out of the accident funds for that class, repaying same from the earnings of that reserve fund or from collections of its investments, or, if necessary, sales of the same.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

Loss of one leg amputated so near the hip that an artificial limb cannot be worn \$2,000

Loss of one leg at or above the knee so that an artificial limb can be worn	\$1,900
Loss of one leg below the knee	\$1,300
Loss of the major arm at or above the elbow	\$1,900
Loss of the major hand at wrist	\$1,600
Loss of one eye by enucleation	\$1,200
Loss of sight of one eye.....	\$ 900
Complete loss of hearing in both ears	\$1 900
Complete loss of hearing in one ear	\$ 500

Compensation for any other permanent partial disability shall be in the proportion which the extent of such other disability shall bear to that permanent partial disability above specified which most closely resembles and approximates in degree of disability such other disability, but not in any case to exceed the sum of two thousand dollars (\$2,000). If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent of the amount awarded the minor workman.

(g) Should a further accident occur to a workman who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjudged according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

Should such further accident result in the permanent total disability of such injured workman, he shall receive the pension to which he would be entitled notwithstanding the payment of a lump sum for his prior injury.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, but in no case to exceed the sum of \$4,000) or, with the consent of the beneficiary, for a smaller sum.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

(l) No workman injured after June 30, 1917, shall receive or be entitled to receive compensation out of the accident fund for or during the day on which his injury was received or the seven days following the same, but if at the end of thirty days following the day of the receipt of his injury his incapacity shall still exist, there shall be included in the

next payment to him out of the accident fund compensation for said omitted period. [L. '19, p. 355, § 4; L. '11, p. 356, § 5; L. '13, p. 467, § 1; L. '17, p. 76, § 1.]

See notes to § 7678.

See *infra*, § 7702, application of this section.

See *infra*, § 7714, aid to workman within subdivision L.

Cited in 72 Wash. 307; 76 Wash. 440; 80 Wash. 675; 89 Wash. 640; 94 Wash. 491, 493; 101 Wash. 368; 102 Wash. 56, 58; 108 Wash. 10, 232.

Compensation and Awards.—Under this section, providing for a monthly payment to a dependent of a deceased workman, not exceeding \$20 a month, and that, if the workman is under age and unmarried, the parents shall receive \$20 per month for each month until the time of his majority, a parent who is also a dependent is entitled to the monthly payment during the continuance of dependency, and not merely to the time of majority; the latter provision being intended for nondependent parents: *Boyd v. Pratt*, 72 Wash. 306, 130 Pac. 371.

This section providing a schedule of awards that injured workmen shall recover in lieu of "any and all rights of action, whatsoever against any person whomsoever" must be liberally construed as a remedial statute to further the legislative intention to make the industry bear the burden of injuries; and is not confined to the abolishment of rights of action by injured workmen against the employer, but extends to actions against third persons whose negligence caused injuries to workmen while engaged in their employment: *Pect v. Mills*, 76 Wash. 437, 136 Pac. 685, Ann. Cas. 1915D, 154, L. R. A. 1916A, 358.

Permanent Partial Disability.—Amount of recovery, and payment in lump sum, under this section: See *Sinnes v. Daggett*, 80 Wash. 673, 142 Pac. 5.

Discretion in awarding recovery for: See *Chalmers v. Industrial Ins. Com.*, 94 Wash. 490, 162 Pac. 576.

Where it is conceded that a beneficiary seeking recovery for "permanent partial disability" under this section, subdivision (f), is suffering from neurosis or hysterical paralysis to such an extent as to be partially disabled, although he may recover, he is entitled to the benefits of subdivision (d), providing for cessation of benefits upon recovery and the continuance of proportionate payments so long as the present earning power is only partially restored: *Parker v. Industrial Ins. Dept.*, 102 Wash. 54, 172 Pac. 830.

Under this section, providing that compensation under the Workmen's Compensation Act shall be made in a lump sum for "permanent partial disability," which is defined as the loss of certain

members "or any other injury known in surgery to be permanent partial disability," the Industrial Insurance Commission cannot, after a judgment of the superior court has determined that an injury to an employee suffering from hernia has resulted in "permanent partial disability," refuse to make compensation in a lump sum because of its promulgated rules regarding hernia, which required the injured employee to submit to an operation and take pay for loss of time only: *Kline v. Industrial Ins. Com.*, 101 Wash. 365, 172 Pac. 343.

A finding of total partial disability in the loss of one eye as the result of an injury is sustained by evidence that the claimant's eyesight was good before the accident and began to fail shortly after, coupled with the opinion of reputable oculists that the condition may have resulted from the accident: *Nelson v. Industrial Ins. Dept.*, 104 Wash. 204, 176 Pac. 15.

Under this section, subdivisions (b), (f), and (g), a workman suffering at different times two permanent partial disabilities, not classified as a permanent total disability, cannot recover compensation in excess of the \$1,500 maximum for partial disability; and his second award must be made in view of his past receipt of money under the act: *Biglan v. Industrial Ins. Com.*, 108 Wash. 8, 182 Pac. 934.

In view of this section, subdivision (d), providing that, in case of recovery and partial restoration of earning power by an injured workman, payments shall continue in the proportion which the new earning power shall bear to the old, a remittitur on appeal and judgment therein, under a decision quoting the statute and directing the insurance department to make such an order for compensation as will reasonably cover the difference in the wage-earning power, means no more than that the award shall be in the proportion which the new earning power shall bear to the old: *Parker v. Industrial Ins. Dept.*, 108 Wash. 235, 183 Pac. 82.

Increase, decrease, termination or suspension of allowance or award. Ann. Cas. 1916E, 889; Ann. Cas. 1917E, 469; Ann. Cas. 1918B, 733.

Total disability under Workmen's Compensation Act. Ann. Cas. 1915B, 1000; Ann. Cas. 1917E, 240.

§ 7680. [6604-6.*] Intentional Injuries—Status of Minors.

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death result to a workman from the deliberate intention of his employer to produce such injury, or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act, and also have cause of action against the employer, as if this act had not been enacted, for any excess of damages over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors: Provided, that in the event it is necessary to procure the appointment of a guardian to receive the money to which any minor workman is entitled under the provisions of this act, the commission may allow from the accident fund toward the expenses of such guardianship, not to exceed the sum of twenty-five dollars (\$25) in any one: Provided, further, that in case any such minor shall be awarded a lump sum payment of the sum of two hundred and fifty dollars (\$250) or less, the industrial insurance commission shall have power, in its discretion, to make payment direct to such minor without the necessity of the appointment of a guardian. [L. '19, p. 364, § 5; L. '11, p. 361, § 6.]

See *infra*, § 7702, application of this section.

Cited in 89 Wash. 640.

Applicability and effect of workmen's compensation acts in case of

injuries to minors, 14 A. L. R. 818.

§ 7681. [6604-7.*] Conversion into Lump Sum Payment.

In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed \$4,000) equal or proportionate as the case may be to the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversions may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary. [L. '17, p. 97, § 22; L. '11, p. 362, § 7.]

Lump sum award under Workmen's Compensation Act. Ann. Cas. 1918B, 694.

§ 7682. [6604-8.*] Delinquent Employers—Priority of Accident Fund Claims.

If any employer shall default in any payment to the accident fund or the medical aid fund, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default be after demand, there shall also be collected a penalty equal to twenty-five per centum of the amount of the defaulted payment or payments, and the commission may require from the defaulting employer a bond to the state for the benefit of the accident and medical aid funds, with surety to their satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, conditioned for the prompt and punctual making of all payments into said funds required during said year period, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state in an action brought by the attorney general in its name shall be entitled to an injunction restraining such delinquent from prosecuting an extrahazardous occupation or work until such bond shall be furnished, and any sale, transfer or lease attempted to be made by such delinquent during the period of such default, of his works, plant or lease thereto shall be invalid until all past delinquencies are made good and such bond furnished. All actions for the recovery of such payments shall be brought in the superior court and in all cases of insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for payments due herein shall be a claim prior to all other claims, except taxes, and it shall be the duty of all receivers or assignees for the benefit of creditors to notify the industrial insurance department of such receivership or assignment within thirty (30) days from the date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the pay-roll of an employer, the certificate of the industrial insurance department that an audit has been made of the pay-roll of such employer pursuant to the direction of the department and of the amount of such pay-roll for the period stated in the certificate shall be prima facie evidence of such fact. [L. '17, p. 487, § 5; L. '17, p. 83, § 2; L. '15, p. 687, § 3. Cf. L. '11, p. 362, § 8.]

Cited in 79 Wash. 404, 506; 84 Wash. 586; 91 Wash. 339; 108 Wash. 72, 484.

DEFAULTS.—In an action by a servant against a master for personal injuries, an objection that the industrial insurance law withdraws this class of actions from the courts cannot be made where it was not raised in the pleadings or suggested below, it being defendant's duty to plead and prove a compliance with the act, in view of this section, providing that an employer shall not be entitled to the benefits of the act during the period of any default in the payment of premiums under section 7676, but shall be liable to suit by the injured workman: *Acres v. Frederick & Nelson*, 79 Wash. 402, 140 Pac. 370, 5 N. C. C. A. 557.

Under this section as originally enacted, actions at law could be commenced where the employer is in default: *Reynolds v. Day*, 79 Wash. 499, 140 Pac. 681.

Laws of 1917, page 487, amending this section, relating to employers who are in default in contributing to the accident fund, does not preserve to the injured workman a right of action against such an employer: *Freyman v. Day*, 108 Wash. 71, 182 Pac. 940; *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 Pac. 339.

Instruction as to comparative negligence adopted by this section: *Lindblom v. Hazel Mill Co.*, 91 Wash. 333, 157 Pac. 998.

§ 7683. [6604-9.] Employer's Responsibility for Safeguard.

If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after the demand therefor by the department, pay into the accident fund, in addition to the same required by section 7676 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to fifty per cent of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to fifty per cent of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7681.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow-workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow-workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or anyone placed by the employer in control, or direction of such workman, the schedule of compensation provided in section 7679 shall be reduced ten per cent for the individual case of such workman. [L. '11, p. 363, § 9.]

§ 7684. [6604-10.*] Exemption of Awards.—Alien Beneficiaries.

No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged nor ever be taken in execution or attached or garnisheed, nor shall the same pass to any other person by operation of law. Any such assignments or charge will be void: Provided, that if any workman shall suffer permanent partial injury, and shall die from some other cause than the accident which produced such injury before he shall have received payment of his award for such permanent partial injury, or if any workman shall suffer any other injury and shall die from some other cause than the accident which produced such injury before he shall have received payment of any monthly installment covering any period of time prior to his death, the amount of such permanent partial award, or of such monthly payment or both, shall be paid to his widow, if he leave a widow, or to his child or children if he leave a child or children and shall not leave a widow: Provided, if the injured workman shall have resided in the United States as long as three years such payment will not be made to any widow or child who is at the time a nonresident of the United States. Except as otherwise provided by treaty, whenever under the provisions of this act, compensation is payable to a beneficiary

or dependent who is an alien not residing in the United States, the commission shall pay fifty per centum of the compensation herein otherwise provided to such beneficiary or dependent. But if a nonresident alien, beneficiary or dependent is a citizen of a government having a compensation law which excludes citizens of the United States either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he shall receive no compensation. Proof of dependency by any beneficiary or dependent residing without the United States shall be made before the nearest (United States) consul or consular agent under the seal of such consul or consular agent and the department may cause any warrant or warrants to which such beneficiary or dependent is entitled to be transmitted to the beneficiary or dependent through the nearest (United States) consul or consular agent. [L. '21, p. 726, § 6. Cf. L. '19, p. 365, § 6; L. '11, p. 364, § 10.]

See notes to § 7678.

See infra, § 7702, application of this section.

Cited in 99 Wash. 178.

The right to compensation under the Workmen's Compensation Act, does not survive to the personal representative, in view of this section, providing that a claim shall not be assigned or subject to execution and that it shall not pass to any other person by operation of law:

Ray v. Industrial Ins. Com., 99 Wash. 176, 168 Pac. 1121.

Survival of right to compensation under workmen's compensation acts upon the death of the person entitled to the award. 15 A. L. R. 821.

§ 7685. [6604-11.] Nonwaiver of Act by Contract.

No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void. [L. '11, p. 364, § 11.]

§ 7686. [6604-12.*] Application for Compensation.

(a) Where a workman is entitled to compensation under this act he shall file with the department his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or someone in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

(e) Any physician who fails, neglects or refuses to file a report with the industrial insurance department as required by this act within ten days of the date of treatment, showing the condition of the injured workman at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured workman as required in this act, shall be guilty of a misdemeanor. [L. '21, p. 727, § 7; L. '11, p. 364, § 12.]

See notes to § 7678.

Cited in 89 Wash. 640.

§ 7687. [6604-12a.] Testimony of Physicians.

In all hearings, actions or proceedings before the commission, or before any court on appeal from the commission, any physician having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of physician to patient. [L. '15, p. 688, § 4.]

§ 7688. [6604-13.*] Medical Examination—Refusal to Submit—Traveling Expenses.

Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period; or, if any injured workman shall persist in unsanitary or injurious practices, which tend to imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his recovery, the commission may reduce or suspend the compensation of such workman. If the workman necessarily incurs traveling expenses in attending for examination pursuant to the request of the department, such traveling expenses shall be repaid to him out of the accident fund upon proper voucher and audit. [L. '17, p. 95, § 18; L. '15, p. 688, § 5. Cf. L. '11, p. 365, § 13.]

Provisions respecting medical examination of workmen. *Ann. Cas.*

1914C, 86; *Ann. Cas.* 1915C, 918; *Ann. Cas.* 1918B, 670.

§ 7689. [6604-14.] Notice of Accident.

Whenever any accident occurs to any workman it shall be the duty of such workman or someone in his behalf to forthwith report such accident to his employer, superintendent or foreman in charge of the

work, and of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. [L. '15, p. 690, § 9. Cf. L. '11, p. 365, § 14.]

Notice of injury under Workmen's
Compensation Act. **Ann.** **Cas.**
1917D, 867, 881, 883, 886; **Ann.**

Cas. 1918C, 1042; **L. R. A.** 1916A,
83, 244; **L. R. A.** 1917D, 135;
L. R. A. 1918E, 556.

§ 7690. [6604-15.] Inspection of Employer's Books.

The books, records and pay-rolls of the employer, pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay-roll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and pay-rolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor. [L. '11, p. 365, § 15.]

See notes to § 7678.

§ 7691. [6604-16.] Penalty for Misrepresentation as to Pay-roll.

Any employer who shall misrepresent to the department the amount of pay-roll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state. All sums collected under this section shall be paid into the accident fund. [L. '11, p. 366, § 16.]

See notes to § 7678.

§ 7692. [6604-17.*] Public and Contract Work.

Whenever the state, county, any municipal corporation or other taxing district shall engage in any extrahazardous work, or let a contract therefor, in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county, municipality or other taxing district. If said work is being done by contract, the pay-roll of the contractor and the subcontractor shall be the basis of computation and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total pay-roll. The contractor and any subcontractor shall be subject to the provisions of the act, and the state for its general fund, the county, municipal corporation or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn, shall be entitled to collect from the subcontractor his proportionate amount of the payment. Whenever

and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employees injured in the course of employment, such employees shall not be entitled to the benefits of this act and shall not be included in the pay-roll of the municipality under this act. The provisions of this act shall apply to all extrahazardous work done by contract; the employer who lets a contract for such extrahazardous work shall be responsible primarily and directly to the accident fund for the proper percentage of the total pay-roll of the work. The contractor and any subcontractor shall be subject to the provisions of this act, and the employer shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment. [L. '21, p. 728, § 8. Cf. L. '15, p. 689, § 6; L. '11, p. 366, § 17.]

Cited in 73 Wash. 398; 94 Wash. 535.

Premiums and Collections.—Contractors liable to a city for premiums due under the Workmen's Compensation Act are not prejudiced by the fact that the city failed to collect in advance the initial payment to the accident fund, due October 1, 1911, as estimated on their pay-rolls for the three preceding months, and subject to final adjustment at the end of the year, but waited until the amount was fixed and made certain by the actual pay-rolls during the period for which the contractors were liable; since the amount of the premiums was the same under either method of computation after final adjustment: State ex rel. Pratt v. Seattle, 73 Wash. 396, 132 Pac. 45.

A city is entitled to collect from its contractors, engaged in extrahazardous work, the amount which it is obligated to pay to the accident fund, under the Workmen's Compensation Act, where the act provides that it is applicable to extrahazardous work engaged in by the city, that payment shall be made from the treasury of the city, that the pay-roll of the contractor shall be the basis of

the computation, and that the municipality shall be entitled to collect from the contractor the full amount paid to the accident fund: State ex rel. Pratt v. Seattle, 73 Wash. 396, 132 Pac. 45.

The act not providing in what manner the collections may be enforced, the city can collect by withholding the amount due the contractor; since the obligations were in equal degree, authorizing a balancing of accounts: State ex rel. Pratt v. Seattle, 73 Wash. 396, 132 Pac. 45.

Computation of premiums: See State v. Chicago, Mil. & Puget S. R. Co., 80 Wash. 435, 141 Pac. 897.

This section was not intended to allow city employees to prosecute civil actions for damages, but rather to relegate them to the provisions made for them by the city, leaving in force the provisions of the act abolishing common-law remedies: State ex rel. Fletcher v. Carroll, 94 Wash. 531, 162 Pac. 593.

Liability of state, county or city as employer within Workmen's Compensation Act. Ann. Cas. 1914B, 889; Ann. Cas. 1917D, 143; Ann. Cas. 1918F, 190.

§ 7693. [6604-18.*] Intrastate and Interstate Railway Employees.

Inasmuch as it has proved impossible in the case of employees engaged in maintenance and operation of railways doing interstate, foreign and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interstate or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this act, the provisions of this act shall not apply to work performed in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees engaged therein, but nothing herein shall be construed as excluding from the operation of this act railroad construction work, or the employees engaged thereon: Provided, however, that common

carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee to his surviving wife and child, or children, and if no surviving wife and child or children, then to the parents, sisters, or minor brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce: Provided further, however, that if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this act or bring under the foregoing proviso of this section any extrahazardous work of such other enterprise or industry, the pay-roll of which may be clearly separable and distinguishable from the pay-roll of the maintenance or operation of such railroad, or the maintenance or construction of its equipment. [L. '19, p. 134, § 1; L. '17, p. 96, § 19; L. '11, p. 367, § 18.]

Cited in 101 Wash. 640; 104 Wash. 175, 179; 108 Wash. 99, 107, 109, 111, 116; 110 Wash. 585; 112 Wash. 156, 157.

Work in Interstate Commerce.—The work of repairing a bridge used in interstate commerce is not within this act: *State v. Bates & Rogers Construction Co.*, 91 Wash. 181, 157 Pac. 482.

The Industrial Insurance Act for the compensation of workmen injured in extrahazardous employments does not apply to employees engaged in operating the system and handling interstate messages of a telegraph company, where a large per cent of the business of the company is interstate business and it is impossible to segregate or separate the time of employees engaged in interstate from those engaged in intrastate business, in view of this section: *State v. Postal Telegraph-Cable Co.*, 101 Wash. 630, 172 Pac. 902.

Under the amendment (Laws 1917, p. 96), of this section, providing that the Workmen's Compensation Act shall not apply to employees of railways doing interstate, foreign, and intrastate commerce, and substituting therefor the liability imposed by the federal Employers' Liability Act, it is immaterial whether an injured employee was engaged in intrastate or interstate commerce, if any portion of the railroad's business is interstate; it being the intention to classify employers and render them liable under the federal act regardless of the nature of the work: *Spokane & Inland Empire R. Co. v. Wilson*, 104 Wash. 171, 176 Pac. 34.

This act does not apply to workmen employed exclusively upon a dredge at work in the navigable waters of the state subject to admiralty jurisdiction; but it applies to employees of the dredger who are engaged solely on the land; and as to employees engaged partly on the land and partly on the dredge, the industrial insurance commission is entitled to collect premiums in proportion to the time spent in either employment, so far as the same can be segregated and determined: *Puget Sound Bridge & Dredging Co. v. Industrial Ins. Com.*, 105 Wash. 272, 177 Pac. 788.

The amendment to the Federal Judiciary Act of October 17, 1917 (U. S. Comp. Stats., §§ 991, 1233) saving to claimants in all civil causes of admiralty and maritime jurisdiction in the federal courts the rights and remedies under the workmen's compensation law of any state, did not have the effect of establishing the jurisdiction of the state Workmen's Compensation Act over personal injuries to workmen occurring on board ships, since the state act does not afford a remedy to such workmen or entitle the commission to collect premiums from employers therefor: *Lund v. Griffiths & Sprague Stevedoring Co.*, 108 Wash. 220, 183 Pac. 123.

The act does not govern employees engaged in unloading a ship at a dock in the navigable waters of Puget Sound, as it cannot be applied to those in maritime services: *Shaughnessy v. Northland Steamship Co.*, 94 Wash. 325, 162 Pac. 546, Ann. Cas. 1918B, 655.

Section 19 of Laws of 1917, p. 96, excluding employees of carriers engaged in interstate and intrastate commerce from the operation of Industrial Insurance Act, is germane to and sufficiently included in the title, "Relating to the compensation of injured workmen," since the title need not be an index to the body of the act or express all details of the subject dealt with: *Archibald v. Northern Pac. R. Co.*, 108 Wash. 97, 183 Pac. 95.

This section does not deny the equal protection of the laws: *Archibald v. Northern Pac. R. Co.*, 108 Wash. 97, 183 Pac. 95.

Under this section, a painter employed by an independent contractor painting

bridges on a railroad engaged in interstate commerce is not within the protection of this act, and no award can be made to his widow upon his death subsequent to the amendment of 1917: *Luby v. Industrial Ins. Com.*, 112 Wash. 153, 191 Pac. 855.

Employees within provision applicable to the "operation of railroads." 7 A. L. R. 1160.

Railroad employees as within purview of workmen's compensation acts. *Ann. Cas.* 1914D, 663; *Ann. Cas.* 1916A, 821; *Ann. Cas.* 1916B, 280; *Ann. Cas.* 1917D, 1148; *Ann. Cas.* 1918B, 664.

§ 7694. Maritime Occupations.

The provisions of this act shall apply to employers and workmen engaged in maritime works or occupations only in cases where and to the extent that the pay-roll of such workmen may and shall be clearly separable and distinguishable from the pay-roll of workmen employed under circumstances in which a liability now exists or may hereafter exist in the courts of admiralty of the United States: Provided, that as to workmen whose pay-roll is not so clearly separable and distinguishable, the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of section 7693. [L. '19, p. 135, § 2.]

Maritime employees as within purview of Workmen's Compensation Act. *Ann. Cas.* 1916B, 88, 280;

1917E, 919; *Ann. Cas.* 1918B, 661; *L. R. A.* 1918C, 474.

§ 7695. Intrastate and Interstate Commerce.

The provisions of this act shall apply to employers and workmen (other than railways and their workmen) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the congress of the United States, only to the extent that the pay-roll of such workmen may and shall be clearly separable and distinguishable from the pay-roll of workmen engaged in interstate or foreign commerce: Provided, that as to workmen whose pay-roll is not so clearly separable and distinguishable, the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of section 7693. [L. '19, p. 136, § 3.]

Applicability of state compensation statutes to railroad employees while engaged in interstate com-

merce. *L. R. A.* 1918C, 450; *L. R. A.* 1918D, 426.

§ 7696. [6604-19.] Elective Adoption of Act.

Any employer and his employees engaged in works not extrahazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act

to all intents and purposes as if they had been originally included in its terms. Ninety per cent of the minimum rate specified in section 7676 shall be applicable to such case until otherwise provided by law. [L. '11, p. 367, § 19.]

Right to, and effect of, election with respect to acceptance of provisions of act. *Ann. Cas.* 1915C, 308;

Ann. Cas. 1918A, 700; *Ann. Cas.* 1918B, 715.

§ 7697. [6604-20.] Court Review.

Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision (1) of section numbered 7679) in so far as such decision rests upon questions of fact, or of the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that on appeal by the employer from a decision of the department under section 7683 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 7683, 7690 and 7691 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pursuant to this act the decision of the department shall be prima facie correct, and the burden of proof shall be upon the party attacking the same. [L. '11, p. 368, § 20.]

See notes to § 7678.

Cited in 72 Wash. 308; 80 Wash. 677; 82 Wash. 320; 94 Wash. 494; 98 Wash. 484; 100 Wash. 681; 102 Wash. 56, 57; 104 Wash. 206, 652; 107 Wash. 402.

Review or Control by Courts.—Under subdivision (f), of section 7679, defining permanent partial disability of an em-

ployee engaged in a hazardous occupation, and prescribing that the award be paid in a lump sum, but never to exceed \$1,500. to be decided by the department, and this section, the amount of the award is within the discretion of the department, and will not be reviewed, in the

absence of capricious or arbitrary action in fixing the same, especially where the amount allowed the employee was \$1,200: *Sinnes v. Daggett*, 80 Wash. 673, 142 Pac. 5.

This section has no application where the facts were undisputed, leaving only a question of law in interpreting the statutes: *Zappala v. Industrial Ins. Com.*, 82 Wash. 314, 144 Pac. 54, L. R. A. 1916A, 295.

While the court will not control the rulings of the industrial insurance commission upon administrative features and matters peculiarly within its control, its decisions interpreting the laws are reviewable by the court, acting on its own interpretation of what the law means: *Zappala v. Industrial Ins. Com.*, 82 Wash. 314, 144 Pac. 54, L. R. A. 1916A, 295.

The legislature has the power to classify an occupation as extrahazardous unless the courts may take judicial notice that it is not hazardous: *State v. Postal Telegraph-Cable Co.*, 101 Wash. 630, 172 Pac. 902.

Under this section, the power to allow attorney's fees is limited to the superior court: *Boyd v. Pratt*, 72 Wash. 306, 130 Pac. 371.

Under this section, findings of the commission against a claim for compensation will be sustained unless the facts clearly preponderate against them: *Marney v. Industrial Ins. Dept.*, 98 Wash. 483, 167 Pac. 1085.

Where the industrial insurance commission made an award of \$225 for partial disability on account of an injury to an arm, the amount of an award for permanent disability by loss of an arm being limited to \$1,500, an appeal seeking the maximum amount for total disability, involves only a question of the commission's discretion touching the amount of the award, under this section; hence the decision will not be reviewed on appeal except for abuse of discretion: *Chalmers v. Industrial Ins. Com.*, 94 Wash. 490, 162 Pac. 576.

Questions going to the classification of an injured workman, and his right to participate in the insurance fund, are subject to review on appeal from the insurance department as "questions of

fact," within the meaning of this section; "questions of fact" meaning all facts necessary to be determined before a workman is classed as a beneficiary, and matters of "discretion," as to which there is no appeal, referring to matters pertaining to the administration of the fund after a workman is classified: *Parker v. Industrial Ins. Dept.*, 102 Wash. 54, 172 Pac. 830.

Costs and witness fees being purely statutory, the court has no discretion to allow extraordinary fees to expert witnesses under this section, which authorizes the court to allow a reasonable attorney's fee and the "fees of medical and other witnesses," out of the administration fund: *Nelson v. Industrial Ins. Dept.*, 104 Wash. 204, 176 Pac. 15.

Under this section, allowing an appeal from an award of damages by the industrial insurance commission upon questions of fact, the action of the commission is not capricious or arbitrary in that an award for \$150 for the loss of part of a finger was determined by a system of "degree" classifications made by the commission under section 7679, subdivision f: *Foster v. Industrial Ins. Com.*, 107 Wash. 400, 181 Pac. 912.

An award of \$150 for the loss of part of a finger, according to the schedule fixed, is not capricious or arbitrary in that it was made by only one of the commissioners, where the schedule was adopted by the commission as a whole, by its "degree" classifications under § 7679, subdivision f, which contemplates that individual awards be made in the exact sum provided by a definite and uniform schedule: *Foster v. Industrial Ins. Com.*, 107 Wash. 400, 181 Pac. 912.

Under this section a voluntary nonsuit granted without prejudice on an appeal from the department operates as a dismissal of the appeal: *Maddox v. Industrial Ins. Com.*, 113 Wash. 137, 193 Pac. 231.

Right and extent of review of findings of workmen's compensation commission. *Ann. Cas.* 1916B, 475; *Ann. Cas.* 1918B, 647; *L. R. A.* 1917D, 186.

Review of findings as to dependency of beneficiary. 13 *A. L. R.* 722.

§ 7698. [6604-21.] Creation of Department.

The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter, the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of

any question arising under this act concurred in by two of the commissioners shall be the decision of the department. The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commission shall select one of their members as chairman. The main office of the commission shall be at the state capitol, but branch offices may be established at other places in the state. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents. [L. '11, p. 369, § 21.]

See *infra*, §§ 7703, 10836, duties devolve upon director of labor and industries.

See *infra*, § 10893, industrial insurance department abolished.

§ 7699. [6604-21a.] Attendance of Witnesses and Production of Papers.

The superior court shall have power to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records before the industrial insurance department. [L. '15, p. 690, § 7.]

§ 7700. [6604-22.*] Salary and Expenses of Commissioners.

The salary of each of the commissioners shall be forty-two hundred dollars (\$4,200) per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the commission may deem proper. Each commissioner shall give a surety company bond in the sum of twenty-five thousand dollars (\$25,000) payable to the state of Washington, conditioned upon the faithful performance of his duties, and the person designated by the said commission as claim agent shall give a surety company bond in the sum of twenty thousand dollars (\$20,000) payable to the state of Washington, conditioned upon the faithful performance of his duties. [L. '19, p. 366, § 7. Cf. L. '11, p. 369, § 22; L. '17, p. 486, § 3.]

See notes to § 7698.

§ 7701. [6604-23.*] Assistants and Physicians—Records.

The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act and fix the compensation of such auditors and assistants at a total expense of not to exceed one hundred twenty thousand dollars (\$120,000) per year. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars (\$5) for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain a uniform form of pay-roll. [L. '19, p. 367, § 8. Cf. L. '11, p. 370, § 23; L. '17, p. 486, § 4.]

See notes to § 7678.

§ 7702. Application of Amendatory Act.

For all cases of injuries to workmen which occurred before this act shall go into effect sections 7675, 7679, 7680 and 7684 shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act. The amendatory provisions of sections 7674, 7676, 7679 and 7680 shall apply only to injuries occurring after they shall go into effect. [L. '19, p. 367, § 9.]

§ 7703. [6604-24.*] Management and Supervision of Department.

The director of labor and industries shall, in accordance with the provisions of this act:

(1) Establish and promulgate rules governing the administration of this act.

(2) Ascertain and establish the amounts to be paid into and out of the accident fund.

(3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

(4) Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases efficient and up to the recognized standard of modern surgery.

(5) Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

(6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

(7) Create a division of statistics within which shall be compiled such statistics as will afford reliable information upon which to base operations of all divisions under said department.

(8) Make annual report to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid. [L. '21, p. 730, § 9. Cf. L. '11, p. 370, § 24.]

Cited in 89 Wash. 647.

§ 7704. [6604-24a.] Violation of Rules—Penalty.

Every person, firm or corporation who shall violate or fail to obey, observe or comply with any rule of the department promulgated under authority of this act, shall be subject to a penalty of not to exceed two hundred and fifty dollars (\$250). Such penalty may be recovered in a civil action in the name of the state, and shall be paid into the accident fund. [L. '15, p. 690, § 8.]

§ 7705. [6604-26.] Disbursements of Funds.

Disbursement out of the funds shall be made only upon warrants drawn by the state auditor upon vouchers therefor transmitted to him by the department and audited by him. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such war-

rant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The state treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the state treasurer: [L. '11, p. 371, § 26.]

§ 7706. [6604-27.] Test of Invalidity of Act.

If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 7676 for the creation of the accident fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 7710, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof. [L. '11, p. 372, § 27.]

Cited in 94 Wash. 333.

Under this section, providing that, if any employer shall be adjudicated to be outside of the lawful scope of the act, the act shall not apply to his workmen, an employee injured while engaged on a ship in maritime service is not relegated

to his remedies in admiralty, and all his rights and remedies remain unimpaired as if the act had never become a law of the state: *Shaughnessy v. Northland Steamship Co.*, 94 Wash. 325, 162 Pac. 546, Ann. Cas. 1918B, 655.

§ 7707. [6604-28.] Statute of Limitations Saved.

If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating

to such injury or death: Provided, that such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 7676, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed. [L. '11, p. 372, § 28.]

§ 7708. [6604-29.] Appropriations.

There is hereby appropriated out of the state treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of one million five hundred thousand dollars, or so much thereof as shall be necessary for the purposes of this act. [L. '11, p. 373, § 29.]

§ 7709. [6604-30.] Safeguard Regulations Preserved.

Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extrahazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method. [L. '11, p. 373, § 30.]

§ 7710. [6604-31.] Distribution of Funds in Case of Repeal.

If this act should be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing. [L. '11, p. 374, § 31.]

§ 7711. [6604-32.] Saving Clause.

This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911. [L. '11, p. 374, § 32.]

Cited in 92 Wash. 45, 47.

§ 7712. Classification of Industries for Medical Aid. [6604-33]

It is the intent to require the industries of the state to furnish medical, surgical and hospital care to their injured workmen and to place the expense thereof upon each industry and upon each establishment in such industry as near as may be in the proportion in which it produces injury and creates expense. To this end the division of industrial insurance shall divide the industries of the state into five classes representing five degrees in the causation of injury and conse-

quent expense for the medical, surgical and hospital care thereof, and said classes to be designated respectively, class A, class B, class C, class D, class E. The industries shall be distributed into these classes as follows: In class C, those industries which produce nearest the average degree of causation and expense; in class A, those which produce nearest one-half of such average; in class B, those which produce nearest three-fourths of such average; in class D, those which produce one and one-fourth times such average; in class E, those which produce nearest one and one-half times such average. The director of labor and industries through and by means of the division of industrial insurance shall annually, before January 1st of each year, fix for the ensuing year, the rate which each firm shall pay into the medical aid fund, which rate may be increased or decreased, based upon the cost experience of such firm for the preceding year, within the limits of payment now existing as follows: When the accident cost to the medical aid fund of an employer be not less than seventy-six per cent or more than ninety per cent of his contribution his medical aid rate shall remain the same. When the accident cost to the medical aid fund of an employer be not less than fifty-one per cent nor more than seventy-six per cent of his contribution his medical aid rate shall be reduced to the next lower rate. When the accident cost to the medical aid fund of an employer be not less than twenty-six per cent nor more than fifty-one per cent of his contribution his medical aid rate shall be reduced to the second next lower rate. When the accident cost to the medical aid fund of an employer be not less than ninety per cent nor more than one hundred and twenty-five per cent of his contribution his medical aid rate shall be increased to the next higher rate. When the accident cost to the medical aid fund of an employer be more than one hundred and twenty-five per cent of his contribution his medical aid rate may be advanced to the second next higher class.

That for the purpose of carrying out the intent of this section in merit rating and penalizing of those industries and employers in classes D and E, there be created two additional classes designated respectively as class F and class G. In class F shall be distributed those industries which produce nearest one and three-fourth times the average degree of causation and expense; in class G, those which produce nearest two times such average. Those industries and employers in classes D and E who shall be penalized as provided in this section shall be placed in class F or class G respectively for the ensuing year, as herein otherwise provided for the re-rating of classes A, B, C, D and E.

In no case shall the reduction in one year be greater than two classes and in no case shall the advance in one year be greater than two classes: Provided, that the annual re-rating directed herein shall not apply to establishments under contract with physicians, surgeons or owners of hospitals operating the same while such contract is in effect. From the original classification or any change made therein any employer or workman claiming to be aggrieved may upon application, have a hearing before the division of the industrial insurance upon notice to the interested parties and in the manner provided in section 7697, a review by the courts. The body of interested workmen may designate

in writing in duplicate one of them to be the recipient of service upon all of them, one copy to be posted for local convenience, and the other to be filed with the secretary of the supervisor of industrial insurance. In default of any such designation, service upon any one workman other than the one instituting a complaint shall be service upon all. [L. '21, p. 730, § 10. Cf. L. '17, p. 83, § 3.]

§ 7713. Medical Aid Fund—Payments into Fund.

A fund is hereby created in the state treasury to be known as the medical aid fund. Into it shall be paid by each employer on or before the fifteenth day of June, 1917, and on or before the fifteenth day of each month thereafter for each day's work or fraction thereof done for him in extrahazardous employment in or during the preceding calendar month the following amount, to wit: In class A one cent, in class B one and one-half cents, in class C two cents, in class D two and one-half cents and in class E three cents. Any such monthly payment in any class may be omitted for and during any month or months if the state medical aid board shall certify that the accumulated fund is sufficient to permit such omission. Any monthly payment may be increased by the state medical aid board if they find, and to the extent to which they find the fund on hand, together with the current payments, will be insufficient to meet the anticipated demands thereon for the ensuing month. Notice of any such increase shall be mailed to each employer at least twenty days prior to the due date of payment, and shall be communicated by the employer to his employees. The employer shall deduct from the pay of each of his workmen engaged in extrahazardous work one-half of the amount the employer is required by the foregoing provision of this section to pay into said fund for or on account of the employment of such workman. The collection of the payments in this section provided for, and the keeping of accounts of collection, shall be in the hands and within the powers and duties of the state industrial insurance commission, and the expense of such bookkeeping, collection, necessary auditing and investigation of pay-rolls, shall be paid out of the administration fund of said commission. The files and records of the industrial insurance department and those of the state medical aid board shall be subject to the reasonable use thereof by the other body, and the industrial insurance department shall furnish the state medical aid board all data available to the department required by the state board. [L. '19, p. 300, § 1; L. '17, p. 85, § 4.]

§ 7714. Medical and Surgical Aid, Hospital Care and Transportation.

Upon the occurrence, after June 30, 1917, of any injury to a workman entitled to compensation under the provisions of said section 7673, he shall receive in addition to such compensation, and out of the medical aid fund, proper and necessary medical and surgical services, at the hands of a physician of his own choice if conveniently located, and proper and necessary hospital care and services during the period of his disability from such injury, but the same shall be limited in point of duration as follows:

In case of permanent partial disability not to extend beyond the date when compensation shall be awarded him out of the accident fund,

in case of temporary disability not to extend beyond the time when the monthly allowances to him out of the accident fund shall cease, in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or he is placed upon the permanent pension roll. But after any injured workman shall have returned to his work his medical and surgical treatment may be continued at the expense of the medical aid fund, if and as long as, such continuation is deemed by the supervisor of industrial insurance to be necessary to his more complete recovery. In order to authorize such continued treatment in any case the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary. Every employer, who employs less than fifty workmen, shall keep at his plant a first aid kit equipped as required by the state board with materials for first aid to his injured workmen. Every employer, who employs within a radius of one-half mile of any plant or establishment fifty or more workmen, shall keep there one first aid station equipped as required by the state board with materials for first aid to his injured workmen. The maintenance of such first aid kits and stations shall be deemed to be a part of any educational standards established under the provisions of sections 7734 and 7736. When the injury to any workman is so serious as to require his being taken from the place of injury to a place of treatment, his employer shall, at his own expense and without charge against the medical aid fund, furnish transportation to the nearest place of proper treatment. Every workman whose injury shall result in the loss of limb or eye shall be once provided by the supervisor of industrial insurance at the expense, not to exceed the sum of one hundred sixty-five dollars (\$165) in any case, of the accident fund, out of which his compensation shall come, an artificial substitute. Every workman, who shall suffer a penetrating wound of the cornea producing an error of refraction shall be once provided at the expense of the accident fund, out of which his compensation shall come, proper and properly equipped lenses to correct such error of refraction and his disability rating shall be based upon the corrected result. A workman, whose injury is of such short duration as to bring him within the provisions of subdivision L of section 7679, shall nevertheless receive during the omitted period, medical, surgical and hospital care and service and transportation under the provisions of this section. [L. '21, p. 733, § 11; L. '19, p. 301, § 2; L. '17, p. 86, § 5.]

§ 7715. State Medical Aid Board Created—Power to Make Rules—Appeals.

A board is hereby created to be known as the state medical aid board, hereinafter designated as the state board, which shall have power and whose duty it shall be to from time to time establish and promulgate printed forms, rules, regulations and practices for the furnishing of such care, treatment and services to workmen. Such rules, regulations and practices may vary between the different localities and industries, but shall be in accordance with the rule established in section 7712. and with the principle that the injured workman shall have the most prompt and efficient care and treatment at the least cost con-

sistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse [divers] surrounding circumstances and locations of industries will permit. The state board shall make and from time to time change as may be, and shall promulgate a fee bill of the maximum charges to be made by any physician, surgeon, hospital, druggist or other agency or person rendering services to injured workmen. No service covered by such fee bill shall be charged for or paid out of the medical aid fund at a rate or rates exceeding those specified in such fee bill, and no contract providing for greater fees shall be valid as to the excess. Any interested employer or workman may complain to the state board against any such rule or regulation. A hearing shall be had on such complaint upon notice to the employer, and upon the employees in the manner provided in section 7712, and from the decision an appeal will lie to the courts in the manner provided in section 7697. [L. '17, p. 87, § 6.]

See *infra*, § 10836, duties of medical aid boards devolve upon director of labor and industries.

See *infra*, § 10893, medical aid boards abolished.

§ 7716. Duties of Board.

It shall be the duty of the state board to supervise and control the administration of the rules, regulations and practices promulgated by it and the details thereof, and it shall have supervisory power over the acts and practices of the local aid boards. [L. '19, p. 303, § 3; L. '17, p. 88, § 7.]

See notes to § 7715.

§ 7717. Secretary—Clerical Assistance.

. . . . The state board may employ, and at will discharge, a secretary at a monthly salary to be fixed by them not exceeding two hundred and fifty dollars (\$250), to be paid from the medical aid fund on voucher and audit. It shall be his duty to attend their meetings, keep a record of the proceedings thereat, keep on separate file all reports made to the board, and perform such other services as may be required by the rules or regulations or by directions given him. . . . The state board shall have power to incur such expense, payable out of the medical aid fund, for clerical assistance as they shall deem necessary, not to exceed the sum of ten thousand dollars (\$10,000) a year. [L. '19, p. 303, § 4; L. '17, p. 88, § 8.]

See notes to § 7715.

This section is largely obsolete, the state board being abolished, and part is omitted.

§ 7718. Local Aid Boards.

Subject always to the rules and regulations established and promulgated by the state board, the administration of, caring for, treatment and services to injured workmen shall be in the hands of local boards to be designated by the name "Local Aid Boards" and by numbers corresponding to the numbers of their respective districts. [L. '19, p. 322, § 40; L. '17, p. 90, § 9.]

See notes to § 7715.

§ 7719. Duty and Powers of Local Aid Boards.

It shall be the duty of each local aid board to provide care and treatment for each workman injured after June 30, 1917, in extrahazardous employment, to forthwith report to the state board, and through the state board to the industrial insurance commission, the commencement of every disability and the termination of the same, and each such report shall be a part of the record of the case in the office of the industrial insurance commission and shall be taken into consideration in the adjustment or settlement of the amount of the award in the case. Each local aid board shall also report to the state board the cause of each injury, with recommendations for the improvement of the service, and of the administration, and also, subject to the provisions of section 7716, to certify to the state board all bills rendered for care or treatment of injured workmen, with power to reject any bill or item thereof incurred in violation of the principle laid down in section 7715.

It shall also be the duty of each local aid board to promptly inspect and analyze all serious accidents to workmen (other than coal miners) occurring within its district and to report to the state safety board the cause of the accident and to suggest a remedy to prevent repetition of the same, not only in the establishment in which the accident occurred, but also in all other like establishments; and, subject to the supervision in the first instance of the state labor commissioner and secondarily of the state safety board, to have charge of the educational features of safety work (other than for coal mining), within its own district. At the end of each calendar year each local aid board shall issue to the state safety board a certificate of the compliance or non-compliance during that year of each establishment or employer in its district within its jurisdiction of the educational standards established for the same. The state safety board shall have the power of revision of such certificates and shall forthwith issue to the industrial insurance commission a final certificate of such compliance or noncompliance for each case for that year. [L. '19, p. 322, § 41; L. '17, p. 91, § 10.]

See notes to § 7715.

§ 7720. Appeal from Local to State Board—Appeal to Courts.

The injured workman, or anyone connected with his treatment, or any interested employer, may appeal from any contract made by, and decision rendered by or any practice or act of the local aid board to the state board. Any such appeal may be effected by written or telegraphic notice to the secretary of the state board. Except in cases of medical or surgical emergency, the hearing of such appeal shall be upon notice given by the secretary or any member of the state board to the workman under treatment, if there be one, or to some member of his family, to the employer or employers and employees interested. The notice to the employees may be given in the manner provided in section 7712. From a decision of the state board an appeal will lie to the courts as provided in section 7697, except that if the appellant prevails, the fees and costs allowed him in his favor shall be payable out of the medical aid fund. The question for decision by the state board or the

courts shall be whether or not the matter complained of is violative of the principle laid down in section 7715. [L. '17, p. 92, § 11.]

See notes to § 7715.

§ 7721. Liability of Employer for Misrepresentation and Failure to Report.

Any employer who shall knowingly misrepresent the amount of contribution due from him to, or collected by him for the medical aid fund shall be liable to the state in civil action for the benefit of said fund in ten times the amount attempted to be concealed or withheld by such misrepresentation, and shall be also guilty of a misdemeanor.

Any person, firm or corporation who not having previously reported to the secretary of the state board, shall establish any new plant, or works, or enter upon the performance of any new building contract or construction contract and who shall fail to send written notice thereof to said secretary within five days after such establishing or entering shall be guilty of a misdemeanor. [L. '17, p. 92, § 12.]

§ 7722. State Medical Aid—Collection Against Public Authorities.

Where the state, county or municipality is employer or contractor for work, and in all cases of work done by private contract or subcontract, the amounts due the medical aid fund shall so far as practicable, be collectible by the method provided in section 7692. [L. '17, p. 93, § 13.]

§ 7723. Liability of State Treasurer.

The state treasurer shall be liable on his official bond for the safe custody of the moneys of the medical aid fund. All the provisions of the act referred to in section 7705 shall be applied to said moneys and the handling thereof by the state treasurer. [L. '17, p. 93, § 14.]

§ 7724. Lieu Contracts for Medical Aid—Approval—Requisites—Complaints—Terminations—Notice—Appeal—Emergency Treatment.

Any contract made in violation of this act shall be invalid, except that any employer engaged in extrahazardous work may, with the consent of a majority of his workmen, enter into written contracts with physicians, surgeons and owners of hospitals operating the same, or with hospital associations, for medical, surgical and hospital care to workmen injured in such employment by and under the control and administration of and at the direct expense of the employer and his workmen. Such a contract shall not be assignable or transferable by operation of law or otherwise except with the consent of the supervisor of industrial insurance indorsed thereon. Before any such contract shall go into effect it shall be submitted to the supervisor of industrial insurance, and may be disapproved by the supervisor of industrial insurance when found not to provide for such care of injured workmen as is contemplated by the provisions of section 7715, and if a contract so submitted be with the owners of a hospital operating the same, or with a hospital association, the supervisor of industrial insurance shall have power to disapprove the same if in his judgment the ownership or management of such hos-

pital or hospital association will not be such as to produce satisfactory service. Any such contract with physician, surgeon, or owner and operator of a hospital, or with a hospital association, so disapproved shall not be valid. Otherwise it shall be approved and take and continue in effect for any period of time specified therein, not exceeding three years from the date of such approval: Provided, however, that the director of labor and industries through the division of industrial insurance may before approving any such contract require the giving by any physician, surgeon, hospital or hospital association of a bond in such sum and in such form, as the director may determine conditioned against any abandonment of such contract. Every such contract to be valid must provide that the expenses incident to it shall be borne one-half by the employer and one-half by such employees, and that it shall be administered by the two interests jointly and equally. So long as such contract shall be in effect the subject matter of the contract shall (except as in this section otherwise specified) be outside of and not affected by the provisions of sections 7712 to 7723 inclusive, and section 7725, other than the provisions of section 7714 relating to artificial substitutes and lenses and the basis of compensation when lenses supplied, and to transportation of injured workmen, and to educational standards of safety, and other than the provisions of section 7719 relating to the analyses and reports of accidents, and the employer shall pay monthly into the medical aid fund ten per centum of the amount he would have been required to pay in that month if such contract had not been made, and of that ten per centum he shall collect one-half from his said workmen by proper deduction from the daily wage of each. During the operation of any such contract the supervisor of industrial insurance or any interested person may file a complaint with the supervisor of industrial insurance alleging that the service and care actually rendered thereunder are not up to the standard provided in section 7715, and if upon a hearing had upon notice to the employer and workmen interested thereunder, the supervisor of industrial insurance may make an order that the contracts shall terminate unless the defect or deficiency complained of shall be remedied to his satisfaction within a period to be fixed in such order, or he may at such hearing sustain the complaint and make an order that the contract shall terminate forthwith. Notice to the workman may be effected in the manner provided in section 7712. The employer or any interested workman may appeal from such decision to the courts in the manner provided in section 7697. During the appeal the contract shall remain in force and operation, but the costs of the appeal shall be paid out of the medical aid fund only in case the decision of the supervisor of industrial insurance is reversed by the court. If during the operation of any such contract, any injured workman shall not receive medical or surgical treatment with reasonable promptness upon the occurrence of his injury, or at any time during his treatment the supervisor of industrial insurance may provide such treatment during the emergency at the expense of his employer, who may charge such expense against such contract, and such emergency treatment shall continue until supplanted by like treatment under such contract, notwithstanding the pendency of an appeal from such action. The cost of such emergency treatment shall not exceed the rates specified in

the fee bill provided by section 7715. The acceptance of employment by any workman shall be and be held to be an acceptance of any existing contract made under this section to which his employer is a party.

No contract for medical, surgical, or hospital care of injured workmen entered into prior to the time this act shall go into effect shall be invalidated by anything in this act contained. [L. '21, p. 735, § 12; L. '17, p. 93, § 15; L. '19, p. 305, § 5.]

§ 7725. Collection and Disbursement of Medical Aid Funds.

The provisions of section 7673 to 7711, inclusive, shall be applicable to the collection of the medical aid fund, to the powers and duties of the state and local boards, and to the medical, surgical and hospital care of injured workmen only so far as they are not inconsistent with the provisions of sections 7712 to 7796, inclusive. Disbursements for the salaries of the secretary and office employees, and for the office and printing expenses of the state board, and in the payment of bills incurred for the medical, surgical, or hospital care of injured workmen shall be made by warrants drawn against the medical aid fund by the state auditor upon certificate thereof or requisition therefor signed by the members of the state board or a majority thereof. [L. '19, p. 308, § 7; L. '17, p. 95, § 16.]

§ 7726. Liability for Illegal Collections for Medical Aid.

It shall be unlawful for any employer to directly or indirectly demand or collect from any of his workmen any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workmen other than as specified in sections 7713 and 7724, and any employer who shall directly or indirectly violate the foregoing provisions of this section shall be liable to the state in civil action for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor. [L. '17, p. 95, § 17.]

§ 7727. Application of Act.

Sections 7727 to 7796, inclusive, shall apply to all and only those establishments, those employers, and those workmen who are or shall be under the jurisdiction of the industrial insurance department. [L. '19, p. 309, § 1.]

Cited in 111 Wash. 241, 243—245, 254—257.

§ 7728. "Place of Work" Defined.

The phrase "place of work" shall mean and include every place, whether indoors or out, or underground or elsewhere, and the premises appurtenant thereto, where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation directly or indirectly relating to any industry, trade, work or business is carried on, including all construction work. [L. '19, p. 309, § 2.]

§ 7729. Safety Terms Defined.

The terms "safe" and "safety," as applied to an employment or place of work; "safeguard" or "safety device" shall mean such freedom from

danger to the life or safety of workmen as the nature of the case will reasonably permit; and the two latter terms shall be given a broad interpretation so as to include any reasonably practical method of mitigating or preventing danger. [L. '19, p. 310, § 3.]

§ 7730. Safeguarding Workmen.

For the purposes of this act, it shall be the duty of every employer to furnish a place of work which shall be as safe for workmen therein as may be reasonable and practicable under the circumstances, surroundings and conditions, and to furnish and use such safety devices and safeguards and to adopt and use such practices, means, methods, operations and processes as under the circumstances, surroundings and conditions are reasonable and practical in order to render the work and place of work safe, and to comply with such standards of safety of place of work and such safety devices and safeguards and such standards and systems of education for safety as shall be from time to time prescribed for such employer by the state safety board, or by statute, or by the state mining board. [L. '19, p. 310, § 4.]

Cited in 111 Wash. 244.

§ 7731. Safety Devices—Penalty for Removal or Destruction.

For the purposes of this act, it shall be the duty of every workman to co-operate with his employer in all efforts for safety in respect of a safe place to work, safety devices, and safeguards, and for educational safety work, and to on his part comply with all standards of safety established for his work by the state safety board, or by statute, or by the state mining board, and not to remove, displace, damage or destroy any safety device or safeguard so established, nor interfere in any way with the use thereof by any other workman, nor interfere with the use of any method or process adopted or prescribed for the protection of workmen in any place of employment. Any employer or workman who shall knowingly remove, displace, damage or destroy, or cause to be removed, displaced, damaged or destroyed, any such safety device or safeguard, shall be guilty of a misdemeanor. [L. '19, p. 311, § 5.]

§ 7732. State Safety Board.

For the purpose of enforcing in all industries (other than coal mining) the performance of the duties prescribed in sections 7730 and 7731, there is hereby created a state safety board, consisting of two members, to wit: The two members of the state medical aid board other than the chairman thereof. [L. '19, p. 311, § 6.]

See *infra*, § 10838, duties devolve upon director of labor and industries.

See *infra*, § 10893, state safety board abolished.

Cited in 111 Wash. 244.

§ 7733. Advisory Members.

The commissioner of labor and the state mine inspector shall act as advisory members of the state safety board, but in such advisory capacity only, and shall not be entitled to vote on any question coming before the

state safety board. They shall not be included in the designation "State Safety Board" wherever used. [L. '19, p. 312, § 7.]

See note to § 7732.

Cited in 111 Wash. 244, 245, 256.

§ 7734. Safety Standards to be Promulgated.

For all other work than coal mining, the state safety board, in accordance with the principles laid down in sections 7729, 7730 and 7731, shall make, and may from time to time modify, and shall promulgate standards of safety, to wit:

(1) To make safe the place of work of workmen, same to be termed "safe place standards";

(2) Of safety devices and safeguards to make safe machines, tools, apparatus and appliances, same to be termed "safety device standards";

(3) Of educational systems for the education and training of employer and workman in the appreciation and avoidance of danger and in the maintenance and use of safe place and safety device standards.

The state safety board shall make, and may from time to time modify, and shall promulgate rules and regulations for the enforcement of the use of such standards of safety. [L. '19, p. 312, § 8.]

See note to § 7732.

Cited in 111 Wash. 244, 256.

§ 7735. Coal Mine Safety Standards.

The safe place standards and safety device standards for the coal mines of the state, employer and workman, shall be those prescribed by chapter III of Title LIX (sections 8636 to 8856, *infra*), as it may be amended from time to time. Such chapter and its amendments are hereinafter referred to as the "Coal Mining Code." [L. '19, p. 313, § 9.]

Cited in 111 Wash. 256, 257.

§ 7736. Coal Mine Educational Standards.

The educational standards for coal mines and coal mining shall be prescribed by a board hereby created to be known as the "State Mining Board," consisting of two members, to be appointed by the state safety board. [L. '19, p. 313, § 10.]

See *infra*, § 10834, duty to appoint, devolves upon director of labor and industries.
See *infra*, § 10893, state safety board abolished.

Cited in 111 Wash. 256.

§ 7737. State Mining Board.

One member of the state mining board must be a mine manager or superintendent or mine safety engineer or mine safety inspector or stockholder of a mining corporation, and one member must be a workman in a coal mine in the state. [L. '19, p. 313, § 11.]

§ 7738. Nominations to State Board by Employers.

Any association of coal mine employers of the state whose organization purposes include or shall be made to include the making of such

nominations and whose membership is open to all coal mine employers in the state, or if there be more than one such organization, a combination of them, may nominate to the state safety board two nominees for appointment to the state mining board, and the state safety board shall appoint one of them. [L. '19, p. 313, § 12.]

See notes to § 7736.

§ 7739. Nominations by Workmen.

Any association of coal mine workmen of the state whose organization purposes include or shall be made to include the making of such nominations and whose membership is open to all coal mine workmen in the state, or if there be more than one such organization, a combination of them, may nominate to the state safety board two nominees for appointment to the state mining board, and the state safety board shall appoint one of them. [L. '19, p. 314, § 13.]

See notes to § 7736.

§ 7740. Time for Making Nominations.

The first nominations under sections 7738 and 7739 shall be made within thirty days after this section shall go into effect, and nominations to fill a vacancy shall be made within thirty days following the creation of the vacancy, and nominations for succession shall be made within a period of sixty days, thirty days preceding and thirty days following the expiration of the term of office of the member to be succeeded. [L. '19, p. 314, § 14.]

§ 7741. Failure to Nominate.

If either nominating body shall fail to make nominations as and within the time provided in sections 7738, 7739, 7740, the state safety board shall make the appointment without the precedent nomination. [L. '19, p. 314, § 15.]

See notes to § 7736.

§ 7742. Term of Office.

The term of office of each member of the state mining board shall be six (6) years and until his successor shall have been appointed. [L. '19, p. 315, § 16.]

§ 7743. Compensation and Expense Allowance.

Each member of the state mining board shall receive his actual traveling expenses incurred in the performance of his duties and compensation for each day's attendance at a meeting of his board at the rate of ten dollars per day. [L. '19, p. 315, § 17.]

§ 7744. Recommendations for Educational Standards.

Any coal mine employer, or workman, or association of either, or any joint committee of such employers and workmen, or the state mine inspector appointed under the provisions of the coal mining code, or any of his deputies, shall be authorized to make recommendations to the state

mining board of educational standards, or amendments of the same, or modifications thereof. The making of the original educational standards shall be withheld for a period of thirty (30) days following the organization of the state mining board, to await the receipt of such recommendations. [L. '19, p. 315, § 18.]

Cited in 111 Wash. 256.

§ 7745. Changes Authorized.

The state mining board shall have power to make changes in its educational standards from time to time. [L. '19, p. 316, § 19.]

§ 7746. Uniformity and Differentiation in Standards.

The standards of safety established by the state safety board shall be, as near as possible and practicable, uniform for each class or for each class subdivision of a class, which has been or may be divided into subdivisions by statute or by the industrial insurance commission, but such standards of safety and the educational standards established by the state mining board may vary between different localities, different classes or class subdivisions of industry and different establishments in any class or class subdivision where in the opinion of the board establishing same the working conditions warrant such differentiation, and where in the opinion of such board there are such differences as to render impracticable, inoperative or unjust a uniform standard or standards. [L. '19, p. 316, § 20.]

See notes to § 7732.

§ 7747. Recommendations for Safety Standards.

Any employer, or workman in any industry (other than coal mining), or association of either, or any joint committee of such employers and workmen, or the state labor commissioner, shall be authorized to make recommendations to the state safety board of safety standards, or amendments therein, or modifications thereof. The making of the original standards of safety by the state safety board shall be withheld for a period of thirty days following the organization of that board to await the receipt of such recommendations. [L. '19, p. 316, § 21.]

§ 7748. General and Special Standards.

Standards of safety having uniform application throughout a class or class subdivision shall be known as "general standards." Standards of safety which shall not be of uniform application to any class or class subdivision shall be known as "special standards." [L. '19, p. 317, § 22.]

§ 7749. New Standards, Hearings on.

At any time after the expiration of thirty days after the organization of the state mining board or the state safety board respectively and from time to time thereafter as new standards or changes or modifications of existing standards are proposed, the state safety board or the state mining board, as the case may be, shall call a public hearing or hearings for the purpose of the consideration and establishment of standards of safety within its jurisdiction. At every such hearing the employers and work-

men interested shall be privileged to attend and be heard in person or by their committee or committees or representatives. [L. '19, p. 317, § 23.]

See notes to § 7732.

§ 7750. Notice of Hearings to be Published.

In advance of every such hearing, the board which is conducting the hearing shall cause a notice of the time and place of such hearing to be published at least once in a daily newspaper of general circulation, published and circulated in the community in, or as near as may be to the place where the establishment or establishments to be affected are located. If the subject of the hearing affects industries throughout the state, such publications shall be in a daily newspaper published in each city of the first class in the state, and such other cities as the board giving the notice shall select. [L. '19, p. 318, § 24.]

See notes to § 7732.

§ 7751. Written Notice—Posting.

Written notice of every such hearing shall also be mailed under the direction of the board which is to conduct such hearing to each employer whose class, class subdivision or establishment is affected. It shall be the duty of each employer receiving such a notice to forthwith post the same at his establishment for the information of his workmen. [L. '19, p. 318, § 25.]

§ 7752. Defective Notice.

No defect, inaccuracy or informality in any such notice or in the publication thereof, nor the omission of notice by mail to any employer, shall invalidate any order or standard of safety established pursuant to such hearing, but no special standard of safety shall be valid unless written notice of the hearing shall have been mailed to the employer or employers of the establishment or establishments affected thereby. For hearings affecting a special standard only, publication of notice may be omitted. [L. '19, p. 318, § 26.]

§ 7753. Approval of Alteration of Safety Standards.

No standard of safety which conflicts or is inconsistent with any safety device, safeguard or safety standard, or rule heretofore established by statute, shall be established by the state safety board without the written consent of both members of the state safety board and the written approval of the same by the industrial insurance commission, the commissioner of labor and the state mine inspector. [L. '19, p. 319, § 27.]

Duties devolve upon director of labor and industries, see notes to §§ 10836—10838.

§ 7754. Enforcement of Coal Mine Standards.

The state mine inspector shall have sole charge of the enforcement of the standards of safety for coal mining and of the inspection incident thereto. [L. '19, p. 319, § 28.]

See infra, § 10838, duties devolve upon director of labor and industries.

See infra, § 10893, state mine inspector and deputies abolished.

Cited in 111 Wash. 256.

§ 7755. Deputy Mine Inspectors.

For the purpose of the enforcement of standards of safety for mining, the state mine inspector shall have such number of deputy mine inspectors as he shall deem necessary, not to exceed three in all, including the one provided for by the coal mining code. [L. '19, p. 319, § 29.]

See notes to § 7754.

§ 7756. Duties of Deputies.

The duties of the deputy mine inspectors shall be to inspect the coal mines of the state, to ascertain and report compliance or noncompliance with safety standards, and to recommend improvements of safety standards. [L. '19, p. 320, § 30.]

See notes to § 7754.

§ 7757. Appointment of Deputies.

The new deputy mine inspectors provided by section 7755 shall be appointed in the manner and shall be subject to the tests as to qualifications provided by the coal mining code for deputy mine inspectors. [L. '19, p. 320, § 31.]

See notes to § 7754.

§ 7758. Increasing Salary of State Mine Inspector.

The state mine inspector shall receive a monthly salary of one hundred dollars (\$100) per month for the performance of his duties in enforcing the use of safety standards and inspecting and certifying the same. This monthly salary shall be in addition to the salary which is provided for him by the coal mining code. [L. '19, p. 320, § 32.]

See notes to § 7754.

Cited in 111 Wash. 257.

§ 7759. Salary of Deputies.

Deputy mine inspectors other than the one provided by the coal mining code shall receive a monthly salary of two hundred and fifty dollars (\$250). [L. '19, p. 320, § 33.]

See notes to § 7754.

§ 7760. Duty of Labor Commissioner.

The state labor commissioner shall have, under the supervision and control of the state safety board, sole charge of the enforcement of safe place and safety device standards (other than for the mining of coal) and of inspection and certification thereof. [L. '19, p. 321, § 34.]

See *infra*, § 10838, duties devolve upon director of labor and industries.

See *infra*, § 10893, commissioner of labor and local aid boards and state safety boards abolished.

§ 7761. Deputy Labor Inspectors.

For the purpose of enforcement of safe place and safety device standards, other than for coal mining, the state labor commissioner shall appoint such number of deputy inspectors as may from time to time be

authorized by the state safety board, and may from time to time remove any such deputy. [L. '19, p. 321, § 35.]

§ 7762. Compensation of Deputies.

Deputies of the state labor commissioner appointed under the provisions of section 7761 shall receive such compensation as may be determined from time to time by the state safety board. [L. '19, p. 321, § 36.]

§ 7763. Inspection Fees Abolished.

After the expiration of four fractional or full calendar months after this section shall take effect payment of any inspection fee by any employer for inspection of his establishment as to safe place or safety device standards shall not be required. [L. '19, p. 321, § 37.]

§ 7764. Increasing Salaries of State Safety Board.

Each executive member of the state safety board shall receive for the performance of his duties as a member of that board a monthly salary sufficient in amount, when added to his compensation under section 7717, to make a total monthly salary of four hundred dollars (\$400). [L. '19, p. 322, § 38.]

§ 7765. Increasing Salary of Labor Commissioner.

For the performance of his duties under section 7760 the state labor commissioner shall receive a salary of one hundred and fifty dollars per month in addition to his salary as state labor commissioner. [L. '19, p. 322, § 39.]

§ 7766. Local Aid Districts Classified.

The state is hereby divided into three local aid districts, numbered and described as follows:

Local Aid District No. 1. That portion of the state lying east of the summit of the Cascade Mountains. Of this district, the head office shall be at the city of Spokane.

Local Aid District No. 2. King, Kitsap, Snohomish, Skagit, Whatcom, Island, San Juan, and Clallam counties, and that portion of Jefferson county lying east of the west line of Mason County extended northward. Of this district, the head office shall be at the city of Seattle.

Local Aid District No. 3. The remaining portion of the state of Washington. Of this district, the head office shall be at the city of Tacoma. [L. '19, p. 324, § 42.]

§ 7767. Appointment of Board Members.

In each local aid district there shall be a local aid board, consisting of two members to be appointed by the state safety board. One member of each local aid board shall be a resident workman (other than a coal miner. The other member of each local aid board shall be a resident representative of the employers in that district (other than coal mine employers). Any association of the workmen resident in any local aid district whose organization purpose shall include, or be made to include the making of such nominations, and whose membership is open to all

classes of workmen may nominate to the state safety board two of its members, and the state safety board shall appoint one of them. Any association of the employers whose establishments are located in any local aid district and whose organization purposes shall include or be made to include the making of such nominations and whose membership is open to all classes of such employers, may nominate to the state safety board two men, and the state safety board shall appoint one of them. The term of office of each member of a local aid board shall be six years and until his successor is appointed. After the expiration of terms and to fill vacancies the same method of nomination and appointment shall obtain. If and so far as the original or substitute nominations are not made within thirty or forty days, as the case may be, following the date of organization of the state safety board, and if and so far as original or substitute nominations to fill vacancies or for succession shall not be made within thirty or forty days, as the case may be, following the creation of the vacancy or end of the term to be succeeded, the state safety board shall make the appointment or appointments without precedent nominations. [L. '19, p. 324, § 43.]

See notes to § 7760.

§ 7768. Examination of Local Aid Board Candidates.

It shall be the duty of the state safety board to examine into the qualifications of all nominees or applicants for appointment to the positions of members of the local aid boards and their assistants (other than clerical assistants) by conducting a thorough examination as to the knowledge of the nominee or application of (a) sections 7673 to 7796 and the amendments thereof; (b) the principles and practice of medical and surgical first aid to injured workmen; and (c) safety standards prescribed by the state safety board or by statute relating to extrahazardous work (other than coal mining). The examination of nominees and applicants shall be in writing, and the manuscripts thereof shall, after completion, be filed with the industrial insurance commission as public documents. No nominee or applicant shall be appointed whose average of accuracy in the examination shall be less than seventy-five per cent. If both nominees for appointment as member of local aid board for any district made by any organization shall fail to qualify as above provided upon examination, notice shall be given to the nominating body, and that body shall be privileged to make substitute nominations within ten days. If both such substitute nominees fail to qualify upon the examination, then in such event the state safety board shall make an appointment for the case without precedent nomination. Examinations for appointment of assistants to the local aid boards shall be made at such times, upon such notice, and in such manner as the state safety board shall by resolution prescribe. [L. '19, p. 325, § 44.]

See notes to § 7760.

§ 7769. Appointment of Board Assistants.

Each local aid board shall have the power to appoint such number of assistants as may be authorized for its district by resolution of the state safety board, but no assistant to a local aid board (other than clerical

assistants) shall be qualified for appointment as such assistant unless he shall have received from the state safety board a certificate of competency after examination as provided in section 7768. Each local aid board shall have power to remove any assistant in its discretion. [L. '19, p. 326, § 45.]

See notes to § 7760.

§ 7770. Branch Offices of Local Aid Boards.

Each local aid board shall have power to establish such branch offices in its district and incur such office expenses as may have been previously authorized by resolution of the state safety board. [L. '19, p. 327, § 46.]

See notes to § 7760.

§ 7771. Salary of Members.

Each member of a local aid board shall receive a salary of three hundred dollars (\$300) per month. [L. '19, p. 327, § 47.]

See notes to § 7760.

§ 7772. Salary of Assistants.

Salaries of assistants of local aid boards shall be as fixed by resolution of the state safety board. [L. '19, p. 327, § 48.]

§ 7773. Coal Mine Inspections.

It shall be the duty of the state mine inspector, either in person, or by deputy, to inspect every coal mine in the state not less than once every four months, for the purpose of ascertaining whether the safety standards applicable thereto are being complied with, and at the end of each calendar year it shall be the duty of the state mine inspector to certify to the state industrial insurance commission the compliance or noncompliance with the safety standards on the part of each coal mine employer in the state during said year. A duplicate of each certificate shall be delivered by him to the state safety board. [L. '19, p. 327, § 49.]

See notes to § 7753.

Cited in 111 Wash. 257.

§ 7774. Inspection of Industrial Establishments.

It shall be the duty of the state labor commissioner, either in person or by deputy, to inspect the establishment or work of every employer engaged in extraordinary work in the state (other than coal mines) as often as directed by the state safety board, but not less than once every four months, for the purpose of ascertaining whether the safe place and safety device standards applicable thereto are being complied with, and at the end of each calendar year it shall be the duty of the state labor commissioner to certify to the state industrial insurance commission the compliance or noncompliance with such standards as to each such employer during the said year. A duplicate of each certificate shall be delivered by him to the state safety board. [L. '19, p. 328, § 50.]

See notes to § 7753.

§ 7775. Failure to Comply With Standards—Penalty.

Any employer who in any establishment carried on by him has refused or failed to comply with the existing "safe place" and/or "safety

device" standards applicable to any such establishment for a period of three months after having had written notice from the supervisor of safety shall have added to the premium of the establishment affected a penalty equal in amount to ten per cent of the contribution to the accident fund of such establishment for the period of noncompliance, and this penalty may be increased by an additional ten per cent of such contribution for each succeeding three months period of refusal or failure of compliance. [L. '21, p. 737, § 13.]

§ 7776. "Cost Rate" Defined.

By the term "cost rate" is meant the rate of premium which the employers of any class, or, as the case may be, of any class subdivision, actually pay into the accident fund for any year period as distinguished from the basic rate for such class or class subdivision specified by statute or by the industrial insurance commission. [L. '19, p. 329, § 52.]

§ 7777. Refund for Maintenance of Educational Standards.

Each employer who shall be certified to the industrial insurance commission to have for any calendar year maintained at his establishment and among his workmen the educational standards established for the same, shall at the end of such year be entitled to receive and shall receive out of the accident fund of his class or class subdivision a refund of ten per cent of the cost rate for such calendar year of the class or class subdivision in which such standards have been so certified to have been maintained. [L. '19, p. 331, § 56.]

§ 7778. Failure to Maintain Educational Standard—Penalty.

Each employer who shall be certified to the industrial insurance commission to have failed to put into effect at his establishment and among his workmen the educational standards established for his class, class subdivision or establishment, as the case may be, within a reasonable time to be fixed and after notification thereof given as in section 6604-98 of Remington & Ballinger's Code, [L. '19, p. 329, § 53]; provided, or who having put such educational standards into effect shall be certified to have failed to maintain the same during any calendar year period, shall pay into the accident fund upon demand of the industrial insurance commission, in addition to the amount he would otherwise have paid for such calendar year into the accident fund on account of the plant, works, or system, in respect to which such default shall occur, a sum equal to ten per cent of that amount. [L. '19, p. 331, § 57.]

"Section 6604-98" is repealed. See L. '21, p. 740, § 17.

§ 7779. Statistical Department of State Safety Board.

The state safety board shall organize a statistical department by which shall be compiled for each calendar year, beginning with the year 1915 for the accident fund, and with the year 1917 for the medical aid fund, statistics showing the amount contributed by each employer in each class or class subdivision to the accident fund, and by each employer and his workmen to the medical aid fund, and the disbursements in comparison to each contribution respectively from each of said funds on

account of injuries to and medical treatment of his workmen and showing by percentage the relation of the same for each year to the cost rate of each class or class subdivision to which the employer is a contributor. [L. '19, p. 332, § 58.]

See notes to § 7753.

§ 7780. Organization of Statistical Department.

To accomplish the work provided by section 7779, the state safety board shall have access in the office of the industrial insurance commission to the records of the industrial insurance department and shall employ such number of statisticians and clerks at such salaries, and shall procure such books of records and office appliances, as to the state safety board shall seem proper for that purpose. [L. '19, p. 332, § 59.]

See notes to § 7753.

§ 7781. Refund for Compliance With Safety Standards—Fifty to Seventy-six Per Cent.

Each employer who shall be certified to the industrial insurance commission to have complied during any calendar year with all of the safety standards applicable to his establishment or case and who shall be certified by the state safety board to the industrial insurance commission to be shown by the experience tables provided by section 7779 to have cost the accident fund of his class or class subdivision for that calendar year and for the four preceding years between fifty per cent and seventy-six per cent of the average cost rate for said aggregate five-year period of each class or class subdivision to which he is contributing shall, at the end of that calendar year, be entitled to receive and shall receive a refund of five per cent of the cost rate for his class or class subdivision for that year. [L. '19, p. 332, § 60.]

§ 7782. Refund for Compliance With Safety Standards—Fifty Per Cent or Less.

Each employer who shall be certified to the industrial insurance commission to have complied during any calendar year with all of the safety standards applicable to his establishment or case and who shall be certified by the state safety board to the industrial insurance commission to be shown by the experience tables provided in section 7779 to have cost the accident fund of his class or class subdivision for that calendar year and for the four preceding years fifty per cent, or less, of the average cost rate for said aggregate five-year period of each class or class subdivision to which he is contributing shall, at the end of that calendar year, be entitled to receive and shall receive a refund of ten per cent of the cost rate for his class or class subdivision for that year. [L. '19, p. 333, § 61.]

See notes to § 7753.

§ 7783. Additional Assessments for Accident Fund—One Hundred to One Hundred and Twenty-five Per Cent of Cost Rate.

Each employer who shall be certified to the supervisor of industrial insurance for any calendar year to have failed to comply with any educa-

tional standard applicable to his establishment or case and who shall be certified by the supervisor of safety to the supervisor of industrial insurance to be shown by the experience tables provided by section 7779 to have cost for that year and the four preceding years the accident fund of any class or class subdivision to which he is a contributor more than one hundred per cent but not more than one hundred and twenty-five per cent of the average cost rate for said aggregate five-year period of such class or class subdivision shall pay into the accident fund upon demand of the supervisor of industrial insurance in addition to the amount which he would otherwise have paid for such calendar year into the accident fund on account of the plant, works or system in respect to which such excess cost shall have occurred a sum equal to five per cent of the cost rate for that year of such class or class subdivision. [L. '21, p. 738, § 14; L. '19, p. 334, § 62.]

§ 7784. Additional Assessments for Accident Fund—One Hundred and Twenty-five Per Cent of Cost Rate.

Each employer who shall be certified to the supervisor of industrial insurance for any calendar year to have failed to comply with any educational standard applicable to his establishment or case and who shall be certified by the supervisor of safety to the supervisor of industrial insurance to be shown by the experience table provided by section 7779 to have cost for that year and for the four preceding years the accident fund of any class or class subdivision to which he is a contributor more than one hundred and twenty-five per cent of the average cost rate for said aggregate five-year period of such class or class subdivision shall pay into the accident fund upon demand of the supervisor of industrial insurance in addition to the amount which he would otherwise have paid for such calendar year into the accident fund on account of the plant, works or system in respect to which such excess cost shall have occurred a sum equal to ten per cent of the cost rate for that year of such class or class subdivision. [L. '21, p. 739, § 15; L. '19, p. 34, § 63.]

§ 7785. Proportional Credits and Penalties.

For the portion of any fraction of calendar year remaining after the expiration of four fractional or full calendar months after this section shall go into effect or after the establishment and notification of any standard of safety by the supervisor of safety or if for any reason any employer shall cease or suspend operation for any portion of any period of calendar year, the credits, and penalties in sections, 7777, 7778, 7781, 7782, 7783 and 7784 provided shall be calculated and applied in the proportion of time which the period of operation shall bear to the calendar year. [L. '21, p. 739, § 16; L. '19, p. 335, § 64.]

§ 7786. Crediting Refunds.

Any refund provided for in sections 7777, 7781 or 7782 may, except in cases of permanent cessation of work, be made by giving a credit to the accident fund account of the employer entitled thereto instead of making the payment of such refund in cash. [L. '19, p. 336, § 65.]

This section also included reference to Remington & Ballinger's Code, § 6604-99, which is repealed. See L. '21, p. 740, § 17.

§ 7787. Appeals to State Safety Board.

Any employer or workman dissatisfied with any certificate or order of the state labor commissioner or any certificate of any local aid board relating to educational safety standards may appeal therefrom to the state safety board. Proceedings for such an appeal shall be informal except that the state labor commissioner or the local aid board, as the case may be, shall be entitled to notice of the appeal and the appellant shall be entitled to notice of the time and place of the hearing of his appeal. The state safety board shall have power to affirm, reverse, or modify any certificate or order so appealed from. [L. '19, p. 336, § 66.]

Duties devolve upon director of labor and industries, see *infra*, §§ 10836—10838.

§ 7788. Review by Courts.

Any employer or workman feeling aggrieved by any order of the state mining board establishing an educational standard or by any order, certificate, or ruling of the state safety board, including its orders or rulings establishing, changing or modifying safety standards, or by any certificate issued by or any order made by the state mine inspector or the state labor commissioner, or by any order, ruling, or act of the industrial insurance commission allowing or refusing to allow a credit, or imposing or failing to impose a penalty, may have the same reviewed by the courts in accordance with the procedure, so far as applicable, established by section 7697. In any such court review, the findings or determinations of the officer or tribunal from which the appeal is taken on any question of fact shall be conclusive and binding upon the court. [L. '19, p. 336, § 67.]

§ 7789. State Board to Devote Full Time.

It shall be the duty of the members of the state safety board to devote all of their time during the office hours of each day to the performance of their duties as members of that board and of the state board. [L. '19, p. 337, § 68.]

See note to § 7787.

§ 7790. Local Boards and Deputy Inspectors to Devote Full Time.

It shall be the duty of all members of local aid boards, all deputy mine inspectors who are provided by section 7755, all deputies of the state labor commissioner who are provided by section 7761, and all assistants of local aid boards, to devote all their time during the office hours of each day to the performance of the duties of their respective offices. All of them must be citizens of the United States. [L. '19, p. 337, § 69.]

See note to § 7787.

§ 7791. Traveling Expenses of Deputies and Local Boards.

In addition to their salaries, the deputy mine inspectors provided by section 7755, the state safety board, the members of the local aid boards and their assistants, the state labor commissioner and his deputies provided by section 7761, shall be paid their actual traveling expenses

incurred in the performance of their respective duties. [L. '19, p. 338, § 70.]

§ 7792. Warrants for Expenses.

All bills for traveling expenses incurred under section 7791 and under section 7743 shall be paid by warrants issued by the state auditor upon presentation of proper vouchers approved by the state safety board. [L. '19, p. 338, § 71.]

§ 7793. Funds Subject to Office Expenses of Boards.

The expenses authorized by sections 7743, 7750, 7758, 7759, 7762, 7764, 7765, 7770, 7771, 7772, 7780, 7788 and 7791, and the cost of necessary record books, stationery, and office appliances for the state mining board, and the state safety board shall be paid one-half out of the general fund of the state and one-half out of the medical aid fund, and all bills for same not covered by section 7792 shall be paid by warrants drawn by the state auditor upon vouchers approved by the state safety board. [L. '19, p. 338, § 72.]

§ 7794. Municipal Ordinances, Superseded.

No safety regulation or practice prescribed by any municipal ordinance affecting the safety of workmen is hereby repealed, but in so far as any such regulation or practice shall be inconsistent with any safety standard established by the state safety board it shall be superseded thereby forthwith upon the delivery by the state safety board to the clerk of the municipality which shall have enacted such ordinance of a copy of a notice in writing of the establishment of such inconsistent safety standard. [L. '19, p. 339, § 73.]

§ 7795. Partial Invalidity.

Adjudication of invalidity of any of sections 7727 to 7796, inclusive, or any part of any section shall not impair or otherwise affect the validity of any other of said sections. [L. '19, p. 339, § 74.]

§ 7796. Repealing Clause.

All acts and parts of acts in conflict with the provisions of sections 7727 to 7796, inclusive, are hereby repealed, but nothing herein contained shall operate to repeal any part of the coal mining code or any of the following sections of this code, or any part thereof: 7642 to 7660, inclusive, 9843 to 9870, inclusive, and 10334. [L. '19, p. 339, § 75.]

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CHAPTER I.

BOARD OF STATE LAND COMMISSIONERS.

§ 7797. [6605.] Board of State Land Commissioners, How Constituted.

The commissioner of public lands, the secretary of state and the state treasurer shall constitute the board of state land commissioners and shall have all powers and perform all duties with reference to the selection, appraisement and sale or lease of school, granted or other lands, except capitol building lands, and the establishment of harbor lines and lease of harbor area which are now or may hereafter be vested in or required of the board of state land commissioners, the board of appraisers of the harbor line commissioner. And said board of state land commissioners shall be and serve as the commission and the board of appraisers mentioned in section 1 of Article XV and section 2 of Article XVI of the state Constitution. [L. '15, p. 19, § 1. Cf. L. '97, p. 229, § 1; L. '07, p. 290, § 1; L. '09, p. 757, § 1.]

See *infra*, § 7999, powers over harbor areas.

See *infra*, § 8079, appraisement of damages from overflowing state lands.

See *infra*, §§ 8081, 8087, rights of way over state lands.

Cited in 18 Wash. 499; 22 Wash. 65; 26 Wash. 370; 27 Wash. 606, 612; 84 Wash. 109, 304, 323.

§ 7798. [6606.] Present Board Successor of Old.

The state board of land commissioner shall, from the date of the assumption of its official duties, possess and exercise over all the lands and areas of the state all the authority, power and functions and perform the duties which the present board of state land commissioners now possess, and is hereby constituted its successor, and all the provisions of law applicable to said board, not inconsistent with the provisions of this act, are hereby made applicable to the board created by this act. [Cf. L. '95, p. 565, § 89; L. '97, p. 258, § 56.]

For former laws on the subject of tide and shore lands, see L. '90, pp. 431—437; L. '03, pp. 386—402; L. '95, pp. 527—571.

"This act" refers to chapter 89 of the Laws of 1897, §§ 1—70, and the acts amendatory thereof, found in this title.

See *infra*, § 8010, successors of board to exercise same powers.

§ 7799. [6607.] Records of Board, etc.

Said board and commission shall keep a full and complete record of their proceedings in separate records, one relating to appraisement, sale, lease and selection of lands; one relating to harbor lines, harbor areas, tide and shore lands. A clerk in the office of the commissioner of public lands shall act as the secretary of said board and commissions, and their office shall be in the office of the commissioner of public lands, and

all records relating to said board and commissions of public lands of the state shall be kept in the office of the commissioner of public lands, and shall be subject to public inspection. [L. '97, p. 230, § 2.]

§ 7800. [6608.] Rules and Regulations.

Said board of state land commissioners shall make all rules and regulations for carrying out the provisions of this act, not inconsistent with law, and the commissioner of public lands shall act as chairman of said board and commissions. [L. '97, p. 230, § 3.]

"This act": See note to § 7798.

§ 7801. [6609.] Report to Legislature on Management of Lands.

It shall be the duty of the board of state land commissioners to fully investigate the management of the public lands of the state of Washington, and the laws relating thereto, and to report to each session of the legislature any changes in the methods of handling the public lands and any changes in the laws relating thereto that may seem to said board wise and proper. [L. '07, p. 212, § 1.]

§ 7802. [6610.] Board may Accept Lands by Gift, etc., on Behalf of State.

The said board of state land commissioners is hereby empowered to accept, in the name of the state of Washington, by deed of sale or gift, or by operation of law, any and all lands of whatsoever nature, and said lands shall be inspected, appraised, managed, leased or sold in the same manner as is prescribed herein for granted lands, and the proceeds of the lease or sale of all such lands shall be converted into the general school fund in the manner prescribed by law, or shall be applied to such specific purpose as may be prescribed by any grantor or testator. This section shall apply especially to all lands that are or may be escheated to the state. [L. '95, p. 567, § 92; L. '97, p. 258, § 58.]

§ 7803. [6611.] Board Empowered to Issue Subpoenas, etc., and Compel Attendance.

[In] all hearings pertaining to the public lands of the state of Washington, or any part thereof, as provided by this act, the board of state land commissioners shall, in their discretion, have power to issue subpoenas and compel thereby the attendance of witnesses at such time and place as may be fixed by the board, to be stated in the subpoenas, and to conduct the examination thereof. Such subpoenas may be served by the sheriff of any county, or by any other officer authorized by law to serve process, or by any person over the age of twenty-one years, competent to be a witness, but who is not a party to the matter in which such subpoena is issued. Each witness subpoenaed by the board as witness on behalf of the state shall be allowed the same fees and mileage as provided by law to be paid witnesses in courts of record in this state, said fees and mileage to be paid by warrants on the general fund. And any person duly served with a subpoena, as herein provided, and who shall fail to obey the same, without legal excuse, such failure to obey shall be considered a contempt, and the board shall certify

the facts thereof to the superior court of the county in which such witness may reside, and upon legal proof thereof such witness shall suffer the same penalties as are now provided in like cases in the courts of this state, as prescribed in section 1220: And it is further provided, that the certificate of the board shall be considered by the court as prima facie evidence of the guilt of the party charged with contempt. [L. '95, p. 567, § 93; L. '97, p. 259, § 59.]

"This act": See note to § 7798.

Cited in 108 Wash. 295.

§ 7804. [6612.] Board's Power of Review—Correction of Errors.

The board of state land commissioners or the commissioner of public lands may review and reconsider any of their official acts relating to the public lands of the state until such time as a lease, contract or deed shall have been made, executed and finally issued by the commissioner of public lands: Provided, that the board of state land commissioners or the commissioner of public lands, may recall any lease, contract or deed for the purpose of correcting mistakes or errors or supplying omissions. [L. '09, p. 768, § 8. Cf. L. '95, p. 570, § 102; L. '97, p. 261, § 67.]

Cited in 14 Wash. 425; 38 Wash. 615; 44 Wash. 247; 54 Wash. 482; 108 Wash. 295.

Under this section, the board of state land commissioners has power to reconsider and rescind an order for the sale of state lands, at any time before sale, without notice or further hearing, and being discretionary, such an order, regular on its face, and within the power of the board, is not subject to review by the courts, which will not inquire into the motives that prompted it: *Polson v. Callvert*, 38 Wash. 614, 80 Pac. 815.

Under this section and § 7808, providing for an appeal to the supreme court, the commissioner of public lands acts within his powers and discretion in letting grazing leases of less than one section to the highest bidders who are apparently qualified, and cannot be mandamusd at the suit of other bidders who made no demand for a hearing or offer to prove that the highest bidders were disqualified: *State ex rel. McKee v. Savidge*, 108 Wash. 292, 183 Pac. 111.

§ 7805. [6613.] Vested Rights Confirmed, When.

This act shall not be construed to affect any vested right in any of the public lands as herein defined of any person, firm or corporation acquired under existing laws, or any preference right of purchase or finding by the board of state land commissioners under existing laws, or cases now pending before said board or in the courts, but the same are hereby confirmed, subject only to such rules and regulations for the government of said rights as may be hereafter defined by the board of state land commissioners. [Cf. L. '95, p. 570, § 103; L. '97, p. 262, § 68.]

"This act": See note to § 7798.

Vested rights in tide lands. See notes to § 7968, *infra*.

Cited in 13 Wash. 273.

§ 7806. [6614.] Trespasses—Land Litigation—Duty of Board as to.

Said board of land commissioners be and it is hereby directed and empowered to investigate all trespasses on and damage to state lands, and prosecute the same under the law; that said board shall also ap-

pear before the United States land offices in all cases involving the validity of the selections of any of the state's granted or school lands, and shall be authorized and empowered to summon witnesses and pay necessary witness fees and clerical hire in such contested cases. [L. '95, p. 569, § 99; L. '97, p. 261, § 64.]

See § 8074, *infra*.

§ 7807. [6615.] Duties of Attorney General.

It shall be the duty of the attorney general, and he is hereby authorized to institute or defend any action or proceeding to which the state or any officer thereof is or may be a party or in which the interests of the state are involved in any court of this or any other state, or of the United States, or in any department of the United States, or before any board or tribunal, when so directed to do by the commissioner of public lands or the board of state land commissioners, or upon his own initiative. The commissioner of public lands is also authorized to appear for and represent the state in any action or proceeding, relating to the public lands of the state. [L. '09, p. 767, § 7. Cf. L. '95, p. 570, § 100; L. '97, p. 261, § 65.]

Cited in 28 Wash. 501.

CHAPTER II.

APPEALS FROM BOARD OF STATE LAND COMMISSIONERS.

§ 7808. [6616.] Appeals to Superior Court.

Any person who is an applicant to purchase or lease any of the state's granted, tide, shore, arid or oyster lands or harbor areas, or to purchase any timber, stone, fallen timber, hay, gravel or other valuable materials situate on any of the public lands of the state, and any person whose property rights or interests will be affected by such sale or lease, who may deem himself aggrieved by any order or decision of the board of state land commissioners concerning the same, shall have the right to appeal from such order or decision to the superior court of the state of Washington for the county in which such lands, harbor areas or materials are situate. Said board of state land commissioners shall forthwith give notice in writing to all parties who have appeared in such proceedings of its order or decision. [L. '01, p. 98, § 1. Cf. L. '95, p. 561, § 82; L. '97, p. 254, § 52.]

Former laws cited in 16 Wash. 636; 17 Wash. 656; 19 Wash. 199, 302, 632; 84 Wash. 494.

See *infra*, § 7967, appeal from appraisement of tide lands.

See *infra*, § 7969, appeal as to preference right to purchase tide lands.

See *infra*, § 8093, appeals from right of way appraisements.

Cited in 95 Wash. 332; 108 Wash. 295.

APPEAL AND REVIEW: See Remington's Digest, Pub. Lands, §§ 122—126.

Jurisdiction and Decisions Reviewable: Scott v. Forrest, 13 Wash. 166, 42 Pac. 519; Ilwaco v. Ilwaco R. & Nav. Co., 17 Wash. 652, 50 Pac. 572; Seattle, Lake Shore & E. R. Co. v. Simpson, 19 Wash. 628, 54 Pac. 29; State ex rel. Maylor v. Superior Court, 19 Wash. 198, 52 Pac.

1009; McNaught-Collins etc. Co. v. Atlantic etc. Co., 36 Wash. 669, 79 Pac. 484; State ex rel. Smith v. Ross, 42 Wash. 439, 85 Pac. 29; Seattle Wharf Co. v. Callvert, 42 Wash. 390, 85 Pac. 16.

§ 123. **Persons Entitled:** Scott v. Forrest, 13 Wash. 166, 42 Pac. 519; Oliver v. Dupee, 16 Wash. 634, 48 Pac. 351; McNaught etc. Co. v. Atlantic etc. Co., 36 Wash. 669, 79 Pac. 484.

§ 124. **Time and Notice of Appeal:** McNaught etc. Co. v. Atlantic etc. Co., 36 Wash. 669, 79 Pac. 484; Union Wharf Co. v. Katz, 8 Wash. 389, 36 Pac. 276; Seattle, Lake Shore & E. R. Co. v. Simpson, 19 Wash. 628, 54 Pac. 29.

§ 125. **Record and Procedure:** Oliver v. Dupee, 16 Wash. 634, 48 Pac. 351; Hays v. Merchants' Bank of Port Townsend, 10

Wash. 573, 39 Pac. 98; Crouch v. Ross, 83 Wash. 73, 145 Pac. 87.

§ 126. **Scope and Extent of Review:** State ex rel. Smith v. Forrest, 8 Wash. 610, 36 Pac. 686, 1120; State ex rel. Megler v. Forrest, 13 Wash. 268, 43 Pac. 51; Oliver v. Dupee, 16 Wash. 634, 48 Pac. 351; Squire v. Sidney, 37 Wash. 1, 79 Pac. 469.

§ 7809. [6617.] Notice of Appeal.

Such appeal shall be taken by the person desiring to appeal serving upon the adverse party, if any there be, and also upon all other parties who have appeared in the proceeding before said board, or upon their attorneys, a notice in writing that he appeals from such order or decision to the said superior court, which said notice of appeal must be served as aforesaid, and, together with the proof or admission of service indorsed thereon or attached thereto, must be filed with the said board within thirty days from and after the day such order or decision is made. [L. '01, p. 98, § 2.]

See notes to § 7808, *supra*.

§ 7810. [6618.] Appeal Bond.

At the time of filing such notice of appeal or within five days thereafter, the appellant shall also file with said board a bond to the state of Washington in the penal sum of two hundred dollars, executed by said appellant and one or more sureties, who, unless a surety company bond be given, shall justify according to law; which bond shall be conditioned that the appellant shall pay all costs that may be awarded against him on the appeal or on the dismissal thereof, and shall be approved by one of the members or by the secretary of said board. [L. '01, p. 98, § 3.]

See *infra*, § 7967, bond on appeal from appraisement of tide lands.

§ 7811. [6619.] Transcript.

Within thirty days after said notice of appeal has been filed, said board shall require its secretary to make a transcript of all the entries in the records of said board relating to the case, and, under the seal of said board, to certify the same together with all the processes, original pleadings and other papers relating to the case and filed with said board, except the evidence used in such proceeding before said board; and shall require his secretary to file said certified transcript and papers, at the expense of the appellant, with the clerk of the superior court of the county to which said appeal has been taken. [L. '01, p. 99, § 4.]

§ 7812. [6620.] Trial De Novo.

The hearing and trial of said appeal in said superior court shall take place *de novo* before the court without a jury, upon the pleadings and papers so certified. The court or judge may order the pleadings to be amended, or new and further pleadings to be filed. Costs on said appeal shall be awarded to the prevailing party as is now provided by

law in cases of actions commenced in the superior court, but no costs shall be awarded against said board or the state. Should judgment be rendered against the appellant, the costs on appeal shall be taxed against him and the sureties on the appeal bond, except when the state is the only adverse party, and shall be included in said judgment, and execution may issue from said superior court for the collection thereof. [L. '01, p. 99, § 5.]

See notes to § 7808, *supra*.

Cited in 58 Wash. 94.

Under this section it is proper to allow an application, based upon the ownership of lots below high-water mark, to be amended so as to show that the applicant

had acquired the record title thereto through a bona fide purchaser from the owner of the upland: *Shorett v. Signor*, 58 Wash. 89, 107 Pac. 1033.

§ 7813. [6621.] Appeal to Supreme Court.

Any party feeling himself aggrieved by the judgment of said court may appeal therefrom to the supreme court of the state of Washington in the same manner and within the time provided by law for appealing from judgments on actions at law to such supreme court. [L. '01, p. 99, § 6.]

§ 7814. [6622.] Record Certified to Board.

Unless appeal be taken from the judgment of said superior court, the clerk of said court shall, on demand, certify, under his hand and seal of such court, a true copy of such judgment to the board of state land commissioners, which judgment shall thereupon have the same force and effect as if rendered by said board. [L. '01, p. 99, § 7.]

CHAPTER III.

COMMISSIONER OF PUBLIC LANDS.

§ 7815. [6628.] Assistant Commissioner—Bond.

The commissioner of public lands may appoint an assistant who shall act as chief clerk in his office, and such assistant shall have power to perform any act or duty relating to the office of commissioner of public lands that the commissioner has, and, in case of vacancy by death or resignation of the commissioner of public lands, said assistant shall perform the duties of said office until the vacancy is filled. Such assistant shall subscribe, take and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all of the official acts of the assistant, and may revoke such appointment at his pleasure, and may require his assistant to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other state official bonds. [L. '03, p. 37, § 1.]

§ 7816. [6629.] Bond of Commissioner.

The commissioner of public lands shall enter into a good and sufficient surety company bond, to be approved by, and deposited with the secretary of state, in the sum of fifty thousand dollars, for the faithful

discharge of the duties of said offices. The premium on said bond shall be paid by the state from the incidental fund provided for the commissioner of public lands. [L. '07, p. 218, § 1. Cf. L. '90, p. 252, § 6.]

See Const., Art. III, §§ 109, 110, commissioner of public lands and term of office; and § 114, duties and salary.

See supra, § 4363, duty relating to diking and drainage districts.

See supra, § 4478, duty as to private ditches.

See supra, § 5775, state oyster commission.

See infra, § 7942, commissioner's annual report.

See infra, § 9330, approval of bridges over waterways.

See infra, §§ 9603—9612, excavating and filling tide lands.

See infra, §§ 10976—10981, salary, oath, and term of office.

§ 7817. [6630.] Bond of Auditor and Cashier.

The auditor and cashier of the office of the commissioner of public lands shall enter into a good and sufficient surety company bond, to be approved by, and deposited with the secretary of state, in the sum of twenty thousand dollars, for the faithful discharge of the duties of said offices [s]. The premium on said bond shall also be paid by the state from the incidental fund provided for the commissioner of public lands. [L. '07, p. 218, § 2.]

§ 7818. [6630-1.] Bonds of Cashier and Assistant Auditor.

The assistant auditor and cashier of the office of the commissioner of public lands shall enter into a good and sufficient surety company bond, to be approved by and deposited with the secretary of state, in the sum of ten thousand dollars (\$10,000), for the faithful discharge of the duties of said office. The premium on said bond shall be paid by the state from the incidental fund provided for the commissioner of public lands. [L. '15, p. 419, § 17.]

§ 7819. [6631.] Commissioner Custodian of All Maps and Records.

All maps, plats and field-notes of surveys required to be made by this act shall, after approval by the state board of commissioners of public lands, be deposited and filed in the office of the commissioner of public lands, and all maps, plats and field-notes now filed with the board of state land commissioners shall be by them deposited with the commissioner of public lands, who shall keep a careful and complete record and index of all maps and plats in his possession in well-bound books, which shall at all times be accessible to the public. [Cf. L. '95, p. 568, § 94; L. '97, p. 260, § 60.]

"This act": See note to § 7798.

§ 7820. [6632.] Seal.

All notices, orders, contracts, certificates, rules and regulations, or other documents or papers made and issued by or on behalf of the board of appraisers or commissions provided for in this act, or the commissioner of public lands, shall be authenticated by a seal whereon shall be the vignette of Washington, with the words "Seal of the commis-

sioner of public lands, state of Washington." [L. '95, p. 569, § 96; L. '97, p. 260, § 61.]

Cited in 58 Wash. 655.

§ 7821. [6633.] Fees of Commissioner.

The commissioner of public lands for services performed by him as such may charge and collect the following fees: (1) For a copy of any record, document or paper on file in his office, fifteen cents per folio; (2) for affixing a certificate and seal, one dollar; (3) for each original contract of sale, lease, or bill of sale, two dollars; (4) for each deed, five dollars; (5) issuance of harbor area lease and approval of bond, five dollars; (6) approval of each assignment of contract, lease or bill of sale, one dollar; (7) for each copy of the plat of a township or any portion thereof, not less than two dollars; (8) for subdivision and issuance of new contracts, after the original has been entered on the records, two dollars for each new contract; (9) for each railroad right of way certificate issued, two dollars. [L. '15, p. 405, § 1. Cf. L. '07, p. 757, § 9. Cf. L. '95, p. 569, § 97; L. '97, p. 260, § 62; L. '03, p. 117, § 9.]

See *infra*, § 7941, fees, reclamation of arid lands.

§ 7822. [6634.] Fee-book—Disposition of Fees.

The commissioner of public lands shall keep a fee-book, in which must be entered all fees received by him, with the date paid and the name of the person paying the same, and the nature of the services rendered for which the fee is charged, which book must be verified monthly by his affidavit entered therein; and all fees so collected by him shall be paid into the state treasury monthly, and the receipt of such treasurer taken, to be retained in the office of said commissioner of public lands as a voucher. [L. '95, p. 569, § 98; L. '97, p. 261, § 63.]

See *supra*, § 5501, moneys collected how to be paid into state treasury.

See *infra*, § 7941, disposition of arid land fees.

§ 7823. [6635.] Abstract or Tract Books, How Kept.

The commissioner of public lands shall cause full and correct abstracts to be made and kept in the office of the commissioner of public lands of all the lands owned or that shall be owned by the state, which abstract shall be in suitable and well-bound books. Such abstracts shall show in proper columns and pages the section or part of section, lot or block, township and range in which each tract is situated, whether timber or prairie, improved or unimproved, the appraised value per acre, the value of improvements and the value of damages, and the total value, the several values of stone, minerals and timber thereon, the date of sale, date of lease, name of purchaser, name of lessee, price per acre, amount of lease per acre, amount of cash paid, amount unpaid and when due, amount of annual interest, and such other columns as may be necessary to show a full and complete abstract of the conditions and circumstances of each tract or parcel of land from the time title was acquired by the state until final payment by the purchasers, and the issuance of a deed by the state to the land. [L. '95, p. 546, § 42; L. '97, p. 245, § 32.]

CHAPTER IV.

SELECTION OF LIEU LANDS.

§ 7824. [6635-1.] Land Commissioner to Make Agreement for Lieu Lands.

For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the state for common schools, educational, penal, reformatory, charitable, capitol building or other purposes, as have been or may be lost to the state, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the state to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the commissioner of public lands, with the advice and approval of the board of state land commissioners and the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the state, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of this act, of lands of the United States of equal area and value. [L. '13, p. 300, § 1.]

Cited in 105 Wash. 147; 110 Wash. 489, 490.

Indemnity and Lieu Lands: See Remington's Digest, Pub. Lands, § 37: State v. Johanson, 26 Wash. 668, 67 Pac. 401; State v. Whitney, 66 Wash. 473, 120 Pac. 116; Bird Timber Co. v. Snohomish County, 81 Wash. 416, 143 Pac. 433.

This act, and Revised Statutes of the United States, §§ 2275, 2276, authorized the relinquishment by the state of school sections 16 and 36 in national forest reservations and the selection of other lands in lieu thereof, pursuant to the

agreement therefor entered into between the commissioner of public lands and the secretary of the interior: Thompson v. Savidge, 110 Wash. 486, 188 Pac. 397.

The state's relinquishment of its right to unsurveyed school sections 16 and 36 which did not vest and had not since vested in the state because of national forest reservations or settlers' claims initiated before survey, is not a disposition of granted lands, in violation of the restrictions of Const., Art. XVI, §§ 1 and 2: Thompson v. Savidge, 110 Wash. 486, 188 Pac. 397.

§ 7825. [6635-2.] Examination and Appraisal.

Upon the making of any such agreement, the board of state land commissioners shall be empowered and it shall be their duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the state, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in section 7824, and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the state in lieu of the lands aforesaid, to the end that the state shall obtain lands in lieu thereof of equal area and value. [L. '13, p. 300, § 2.]

Cited in 110 Wash. 490.

§ 7826. [6635-3.] Transfer of Title to United States.

Whenever the title to any lands selected under the provisions of this act shall become vested in the state of Washington by the acceptance and approval of the lists of land so selected, or other proper action of the United States, the governor, on behalf of the state of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the state relinquished under the provisions of this act, which deed shall convey to and vest in the United States all the right, title and interest of the state of Washington therein. [L. '13, p. 301, § 3.]

Cited in 105 Wash. 147; 110 Wash. 490.

Under this section, title to the school lands remains in the state until the conditions are fulfilled, and are not subject to taxation; notwithstanding a patentee from the government in possession may thereupon become the owner by compliance with the state or federal conditions therefor: *Ortman v. Kittitas County*, 105 Wash. 144, 177 Pac. 721.

A patentee from the government prior to survey, of land in section 36, the title to which had been quieted in the state, but who was left in possession pending negotiations of lieu land selections which would probably result in his becoming the owner of the land, may maintain an action to cancel taxes improperly assessed against the land while the title was in the state: *Ortman v. Kittitas County*, 105 Wash. 144, 177 Pac. 721.

§ 7827. [6635-4.] Agent to Rent Escheated Lands.

The commissioner of public lands is authorized to employ an agent or agents to rent any improved escheated urban property for such rental and time and in such manner as the commissioner may direct: Provided, that no lease thereof for a term longer than one year shall be made except to the highest bidder at public auction in the manner provided by law for the leasing of public lands, and, except in such case, no lessee shall be entitled to compensation for any improvements which he may make thereon. Such agent or agents shall cause such repairs to be made to such property as the commissioner may direct, and shall deduct the cost thereof, together with such compensation and commission as the commissioner may authorize, from the rentals for such property, and the remainder which shall have been collected shall be transmitted monthly to the commissioner of public lands. [L. '13, p. 247, § 1.]

CHAPTER V.**CONFIRMATION OF OLD TITLES TO SCHOOL AND UNIVERSITY LANDS.****§ 7828. [6636.] Titles, How Acquired.**

All persons who have purchased school and university lands from the commissioners of any county, county school superintendent, or other agent of the county, or the university commissioners of the territory of Washington, acting under the authority of any law passed by the territory of Washington, where the full purchase price for such land has been paid in good faith to such county or university commissioners, or other authorized agent, may secure title thereto as hereinafter provided. [L. '90, p. 448, § 1; 1 H. C., § 2182.]

Cited in 5 Wash. 274, 764; 7 Wash. 216.

SCHOOL AND UNIVERSITY LANDS:
See *Remington's Digest*, Pub. Lands, §§ 34—36.

§ 34. Effect of Reservation, Grant to State and Selection: *Barkley v. United States*, 3 W. T. 522, 19 Pac. 36; *Romino v. State*, 7 Wash. 215, 34 Pac. 921; *State*

ex rel. Moore v. Callvert, 34 Wash. 59, 74 Pac. 1018; Peterson v. Baker, 39 Wash. 275, 81 Pac. 681.

§ 35. **Lands Included—Lands Subject to Pre-existing Rights:** Brygger v. Schweitzer, 5 Wash. 564, 32 Pac. 462, 33 Pac. 388.

§ 36. — **Mineral Lands:** Wheeler v. Smith, 5 Wash. 704, 32 Pac. 784.

A proceeding against the state under this section for the relief of bona fide purchasers of state school lands is of an equitable nature: Smith v. State, 5 Wash. 273, 31 Pac. 865.

§ 7829. [6637.] Purchaser, etc., may Sue State, When—Proceedings.

Any person, or his executors, administrators, heirs, assignee, or successor in interest, being the legal and bona fide holder and owner, assignee, or legal representative of the person to whom has been made a conveyance of such school or university land, which conveyance has been executed by the county commissioners or county school superintendent of any county, or the university commissioners of the said territory of Washington, or an authorized commissioner or regent of the university of said territory, or by any other officer, commissioner, or agent acting under authority conferred by any law of the said territory of Washington, where the grantee named in such conveyance has paid the full purchase price for said land, and for any reason such grantee has not been vested with a title thereto, such purchaser, his assignee or legal representative, shall have a right of action against the state of Washington in the superior court of the county in which the land is situated to secure a confirmation of title to the land described in said deed, or to a specific performance of the conditions of the deed or instrument, and the court in its decree may order a deed to be executed by the commissioner of public lands of the state of Washington, confirming to the grantee, or assignee, or legal representative the tract described in such conveyance, or intended to have been granted thereby. [L. '90, p. 449, § 2; 1 H. C., § 2183.]

See supra, § 886, when actions against state to be commenced in Thurston county, and how.

Cited in 74 Wash. 581.

This section indicates the purpose to take from the regents all power to dis-

pose of university lands: State v. Hewitt Land Co., 74 Wash. 573, 134 Pac. 474.

§ 7830. [6638.] Interested Persons to be Made Parties to Suit.

Any person having or claiming any right or interest in any land which shall be the subject of said action shall be made a party to said suit, and such right or interest of said claimant, whether legal or equitable, shall be tried and determined by said court, and the decree of the court shall have full power to adjudge and settle the respective rights of the claiming parties. [L. '90, p. 449, § 3; 1 H. C., § 2184.]

The jurisdiction conferred upon the courts under the provisions of this chapter is of an equitable nature: Smith v. State, 5 Wash. 273, 31 Pac. 865.

The costs in an action against the state to confirm the sale of school lands made under the laws of the territory

should be assessed against the plaintiff, although judgment may be in his favor; but the state is liable for costs from an unsuccessful appeal from such judgment: Romine v. State, 7 Wash. 215, 34 Pac. 924.

§ 7831. [6639.] Purchaser to have Payments Refunded, When.

In all cases where the land or tracts of land described in such deed or conveyance shall have been granted to any other person or persons under

any law of the United States, or not granted to the state of Washington, by reason whereof said state of Washington is unable to confirm to the bona fide purchaser of such tract who has duly paid the consideration in such deed recited, or his legal representative or successor in interest, the said state of Washington shall refund to such purchaser or his successor in interest the full consideration by him paid, together with lawful interest from the date of such purchase. [L. '90, p. 449, § 4; 1 H. C., § 2185.]

§ 7832. [6640.] Practice and Procedure—Appeal.

In such suits and actions instituted under the provisions of this chapter, the practice and procedure shall conform to the practice in superior courts regulating civil actions, and an appeal or writ of error shall lie to the supreme court of the state of Washington, as in other civil actions. [L. '90, p. 450, § 5; 1 H. C., § 2186.]

“Or writ of error.” Consult § 1716 et seq., appeals to supreme court.

CHAPTER VI.

CLASSIFICATION AND SELECTION.

§ 7833. [6641.] Classification of State Lands.

That for the purpose of this act all lands belonging to and under the control of the state shall be divided into the following classes:

(1) **Granted Lands.** (a) Common school lands and lieu and indemnity lands therefor. (b) University lands and lieu and indemnity therefor. (c) Other educational land grants. (d) Lands granted to the state of Washington for other than educational purposes, and lieu and indemnity lands therefor. (e) All other lands, including lands acquired or to be hereafter acquired by grant, deed of sale, or gift, or operation of law, including arid lands.

(2) **Tide Lands.** All lands over which the tide ebbs and flows from the line of ordinary high tide to the line of extreme low tide, except in front of cities where harbor lines have been established or may hereafter be established, where such tide lands shall be those lying between the line of ordinary high tide and the inner harbor line and excepting oyster reserves.

(3) **Shore Lands.** Lands bordering on the shores of navigable lakes and rivers below the line of ordinary high water and not subject to tidal flow.

(4) **Harbor Lines and Areas.** Such lines and areas as are described in Article XV of the Constitution of the state of Washington and which have been established according to law. All of which outer harbor lines so established as aforesaid are hereby ratified and confirmed, also all such harbor lines and areas as may and shall be hereafter established. [L. '11, p. 129, § 1. Cf. L. '95, p. 527, § 1; L. '97, p. 230, § 4.]

“This act”: See note to § 7798.

Compare L. '61, pp. 31—33; L. '62, p. 62; L. '63, pp. 473—477; L. '64, p. 25; L. '67, p. 136; L. '69, pp. 401, 402; L. '83, p. 68, relating to disposition of school lands; L. '90, pp. 438—448, sale and lease of school lands. Also L. '77, pp. 258, 259, relating to improvement of tide lands by dikes or ditches.

For laws specifically repealed by this act, see L. '97, p. 262, § 70.

See *supra*, §§ 4704, 4705, preference right of school districts to purchase school lands for schoolhouse sites.

See *infra*, §§ 9593—9600, public ways to harbors.

Cited in 13 Wash. 272; 17 Wash. 655; 18 Wash. 497; 26 Wash. 370; 27 Wash. 605; 34 Wash. 251; 46 Wash. 42; 49 Wash. 69, 133; 57 Wash. 536; 72 Wash. 556; 76 Wash. 162, 172; 89 Wash. 68, 71, 72; 105 Wash. 246; 110 Wash. 619.

There is no conflict between this section and section 7961, dividing all tide lands into two classes, with reference to the location of the boundaries of cities and towns: *Pearl Oyster Co. v. Heuston*, 57 Wash. 533, 107 Pac. 349, 832, 135 Am. St. Rep. 1007.

Classification: See *Remington's Digest*, Pub. Lands, § 90; *State ex rel. McKenzie v. Forrest*, 11 Wash. 227, 39 Pac. 684; *State ex rel. Lehman v. Bridges*, 24 Wash. 363, 64 Pac. 518.

There is no conflict between this section and section 7837 dividing all tide lands into two classes, with reference to the location of the boundaries of cities and towns: *Pearl Oyster Co. v. Heuston*, 57 Wash. 533, 107 Pac. 349, 832, 135 Am. St. Rep. 1007.

Definition of shore lands irrespective of statute: *State v. Sturtevant*, 76 Wash. 158, 135 Pac. 1035, 138 Pac. 650.

No statutes of this state indicate any intention to pass to the owner of abut-

ting lands the title to islands, even if joined to the mainland by a strip of "shore land," defined by this section, as lands bordering on the shores of navigable lakes and rivers, below the line of ordinary high water: *Hauge v. Walton*, 72 Wash. 554, 131 Pac. 248.

Under this section the legislature limited the outer boundaries of tide lands, using "mean low tide" advisedly, and did not attempt to limit the water boundary to shore lands: *State v. Sturtevant*, 76 Wash. 158, 135 Pac. 1035, 138 Pac. 650.

Under this section, a state deed of tide lands conveys title only to the line of mean low tide; as the deed is limited by the express terms of the statute: *State v. Scott*, 89 Wash. 63, 154 Pac. 165.

"Excepting oyster reserves" was intended to except oyster lands from the definition of tide lands: *Hurley v. Olympia Oyster Co.*, 105 Wash. 244, 177 Pac. 732.

Under this section, tide lands are "lands belonging to the state," within the meaning of section 7892, *infra*: *State ex rel. Stetson v. Savidge*, 110 Wash. 618, 188 Pac. 923.

§ 7834. [6641-1.] Preference Rights.

The prior and preference right to purchase all tide-lands of the second class lying between the line of mean low tide and the line of extreme low tide in front of all tide lands of the second class heretofore sold or conveyed by the state of Washington is hereby granted for the period of ninety days from the date this act goes into effect to the purchasers, their grantees or successors in interest of any tide lands of the second class heretofore sold or conveyed by the state of Washington. Such additional tide-lands may be so purchased at the rate of one dollar per lineal chain measurement to be based on the United States government meander lines bordering the said tide lands heretofore sold. Upon application and payment for such additional tide-lands within said ninety days to the land commissioner of the state of Washington, deed shall be issued to the respective purchaser or purchasers therefor. If such application and payment is not made within said ninety days by the parties to whom the preference rights under this section are given then such additional tide-lands shall be sold as other tide lands are sold under the laws of the state of Washington. [L. '11, p. 130, § 2.]

Cited in 89 Wash. 69, 71; 105 Wash. 246.

§ 7835. [6642.] Terms Defined—Inspection, etc., of Lands.

All lands described in the last section are "public lands" and the terms "public lands" and "state lands" shall be defined and deemed to be synonymous whenever either is used in this chapter. The selection, in-

spection and appraisal of land as hereinafter provided for in this chapter may be made by one of the members of the said board or commission; but when it is deemed advisable and for the best interest of the state, the commissioner of public lands, with the consent and approval of the board of state land commissioners may employ one or more citizens of the state, familiar with such work to personally inspect, appraise or select lands, harbor areas. [L. '07, p. 748, § 1. Cf. L. '95, p. 526, § 2, and p. 529, § 7; L. '97, p. 231, § 5.]

"This chapter" refers to chapter 89 of the Laws of 1897, §§ 1—71, and the acts amendatory thereof.

Cited in 19 Wash. 433; 33 Wash. 130; 49 Wash. 133; 110 Wash. 620.

§ 7836. [6643.] Compensation of Inspectors.

The compensation of such inspectors so appointed by the commissioner of public lands with the consent and approval of the board of state land commissioners shall not exceed seven dollars per diem for the time actually employed, and necessary expenses, which shall be submitted to the commissioner of public lands in an itemized and verified account, to be approved by the commissioner of public lands. [L. '97, p. 231, § 6; L. '07, p. 748, § 2.]

§ 7837. [6644.] Duties of Inspectors—Surveys, etc.

Said state land inspectors shall, immediately upon their appointment, under the direction of the commissioner of public lands, inspect such unsurveyed lands or townships as the board may designate, with a view of determining whether it is desirable to have them reserved for the selection of lands to complete the grant of public lands to the state. They shall report the result of their inspection without delay, showing approximately the number of acres arable, the amount, quality, character and value of timber, the nearest practicable route for removing the same, the number of settlers in the township and the value of the improvements. Upon the recommendation of the board the governor shall, if he concurs, cause an application to be filed with the surveyor-general for the survey of such township or townships, and shall cause due notice thereof to be published in accordance with the act of congress providing for the reservation and survey of such townships and under such rules and regulations as may be made by the secretary of the interior. Whenever the United States surveyor-general shall have made an estimate of the cost of survey, and it shall appear, under the decision and rulings of the department of the interior, that there is no federal government appropriation for the survey of any township applied for by the state, the governor is authorized and empowered to execute a voucher to the state auditor for the amount of such estimate, and the state auditor is authorized and directed, upon the filing of such voucher, to issue a warrant on the general fund for the amount of the same, and the state treasurer shall pay said warrant out of the moneys appropriated for said purpose. Upon the receipt of such warrant the governor shall deposit the same to the credit of the United States, in accordance with such rules and regulations as may be prescribed by the department of the interior. [L. '95, p. 532, §§ 13, 14; L. '97, p. 231, § 7.]

§ 7838. [6645.] Inspectors' Bond—Oath.

The said state land inspectors, before entering upon their duties, shall each enter into a bond unto the state of Washington, in the penal sum of five thousand dollars, conditioned to well and faithfully perform their duties as such, to be approved by the commissioner of public lands, and shall take and subscribe an oath before some officer authorized to administer oaths, according to the laws of the state, in substance as follows:—

I, A B, do solemnly swear that I will well and truly perform the duties of land inspector for the state of Washington, in the selection, inspection and appraisement of the lands granted thereto, to the best of my knowledge and ability; and further that I will not communicate to any person not a member of the board, or commission, or the commissioner of public lands, any information in relation to location, character and value of the public lands examined by me, or disclose to anyone anything in relation to such public lands except to such board or commissioner of public lands; that I will, when directed, personally and carefully examine each parcel or tract of land to be listed by me, and make an appraisement and value of the same and the timber thereon; that I am not nor will I become interested directly or indirectly in the sale or purchase of said lands, and that I will report every material fact connected with said lands directly to the board of state land commissioners, to enable it to determine the situation, value and character of the timber thereon and the lands selected by me; in investigating, appraising, or in the prosecution of any trespass, I do solemnly swear that I will act according to the best of my knowledge and ability, and will protect the interests of the state of Washington.

Upon filing such bond and affidavit the inspector may be authorized and commissioned by said commissioner of public lands to view, select and appraise lands as hereinafter provided for. [Cf. L. '95, p. 530, § 9; L. '97, p. 232, § 8.]

§ 7839. [6646.] Inspectors' Duties and Reports.

The said commissioner of public lands may instruct the said state land inspector to view and examine the said lands subject to selection by the smallest legal subdivisions of forty acres each, and shall classify such lands into grazing, farming and timbered lands, and estimate the value of each tract so viewed; said state land inspector shall also in timbered lands estimate the amount and value of the standing timber thereon and the value thereof after the timber is removed; he shall make a report thereof to the commissioner of public lands as amply and expeditiously as possible on blank lists to be furnished by said commissioner of public lands for that purpose; that said report shall be made under oath, to the effect that the inspector has personally examined the tracts mentioned in each forty acres thereof, that said report and appraisement is made from such personal examination and is to the best of affiant's knowledge and belief true and correct, and that the lands are not occupied by any bona fide settler. They shall also separately appraise all valuable material thereon, improvements, etc. [Cf. L. '95, p. 530, § 10; L. '97, p. 233, § 9.]

§ 7840. [6647.] Classification Lists.

Upon receipt of such report or reports the board of state land commissioners shall arrange and classify the lands so selected into several lists for filing in the general United States district land offices of the United States in this state, and shall classify the lands and apportion them to the several specific grants under said act of congress referred to, so that there may be lands of nearly as equal value as possible apportioned to the several grants. Said list shall be made in triplicate, one for filing in said local land offices, one for transmission by it to the secretary of the interior, and one to be filed in the office of the commissioner of public lands. Said lists shall state the grant for which the same is made. The commissioner of public lands shall file said lists so arranged, classified and duly certified under the rules and regulations of the secretary of the interior, in the several United States district land offices throughout the state having jurisdiction thereof: Provided, that if it be found, upon the filing of said lists, that any of the lands described therein have been filed upon or applied for, then the commissioner of public lands is authorized to eliminate therefrom such lands: And provided further, said commissioner of public lands or board of state land commissioners may decline to list any lands reported by the inspectors which may not by them be deemed desirable. [L. '95, p. 531, § 11; L. '97, p. 234, § 10.]

Cited in 17 Wash. 123.

§ 7841. [6648.] Penalty for Disclosing Information.

If any state land inspector knowingly or willfully shall make a false oath concerning the appraisement on said lands, or knowingly, or willfully divulge anything, or give any information in regard to such land other than to the board of state land commissioners, or commissioner of public lands, he shall forthwith be removed from office and be deemed guilty of perjury and subject to the penalties thereof, and it shall be and is hereby made the duty of the board of state land commissioners, or the commissioner of public lands, to prosecute him therefor. [L. '95, p. 531, § 12; L. '97, p. 234, § 10½.]

Cited in 4 Wash. 101; 8 Wash. 114.

§ 7842. [6649.] Nonmineral Certificates.

The commissioner of public lands be and hereby is authorized and directed to cause publication of notices of application to the interior department for certification that state school land or other granted land is nonmineral in character, in accordance with the rules of the general land office. [L. '97, p. 246, § 33.]

§ 7843. [6650.] May Relinquish Certain Lands to the United States.

The board of state land commissioners shall have authority and power to relinquish to the United States all lands heretofore selected by the territory of Washington or any officer, board or agent thereof, or by the state of Washington or any officer, board or agent thereof, or which may be hereafter selected by the state of Washington, or any officer, board or agent thereof, in pursuance of any grant of public lands made by the

United States or the congress thereof to the territory or state for any purpose or upon any trust whatever, the selection of which has failed or been rejected or shall fail or shall be rejected for any reason. [L. '99, p. 105, § 1.]

§ 7844. [6651.] Selection of University Lands.

The commissioner of public lands is hereby authorized and directed to ascertain how much land granted to the state for university purposes, by section 14 of the enabling act, approved February 22, 1889, remains unsold, and to select from the lands granted to the state of Washington by section 17 of said enabling act, for state, charitable, educational, penal and reformatory institutions, one hundred thousand (100,000) acres thereof, assigned for the support of the University of Washington by section 9 of the act of the legislature of the state of Washington, entitled "An act providing for the location, construction and maintenance of the University of Washington, and making an appropriation therefor, and declaring an emergency," approved March 4, 1893. [L. '03, p. 137, § 1.]

Cited in 34 Wash. 59.

This section is not unconstitutional as special legislation: State ex rel. Moore v. Callvert, 34 Wash. 59, 74 Pac. 1018.

§ 7845. [6652.] Selection—How Made.

The lands to be selected from the lands granted by section 17 of the enabling act, shall be selected from such lands now remaining unsold and undisposed of, and so that the lands so selected shall, as nearly as practicable, in the judgment of the commissioner, equal in value, the remainder of said original grant; the estimate of values to be made on the basis of the condition of the land as originally selected by the state under said grant. [L. '03, p. 138, § 2.]

§ 7846. [6653.] List Filed With Board of Regents—Disposal.

When said commissioner shall have ascertained and selected such lands as above required, he shall make a correct list by proper legal description according to the United States government surveys, of all said lands, which said list and selection shall be approved by the state board of land commission, and when so approved by the certificate of said board, the same shall be entered and recorded by said state land commissioner, in a book kept in his office for that purpose, and the copy of said list, duly certified by said land commissioner, shall be filed with the board of regents of the University of Washington, and thereafter such lands shall be known as the university lands, and shall never be sold, encumbered, or otherwise disposed of, except by and with the consent of the board of regents of the University of Washington. [L. '03, p. 138, § 3.]

§ 7847. [6654.] Endowment for Support of State University.

One hundred thousand acres of the lands granted by section 17 of the enabling act, approved February 22, 1889, for state, charitable, educational, penal and reformatory institutions are hereby assigned for the support of the University of Washington. [L. '93, p. 299, § 9.]

§ 7848. Forest Demonstration and Experiment Station.

For the purpose of securing an area suitable for a demonstration forest and forest experiment station for the University of Washington authority is hereby granted the board of regents of the University of Washington and the commissioner of public lands with the advice and approval of the state board of land commissioners, all acting with the advice and approval of the attorney general, to exchange all or any portion of the granted lands of the University of Washington assigned for the support of said university by section 7847, for all or any portion of such lands as may be acquired by the state under and by virtue of chapter IV of this Title, by exchange with the United States in the Pilchuck-Sultan-Wallace watersheds included within the present boundaries of the Snoqualmie national forest. Said board of regents and commissioner of public lands with the advice and approval aforesaid are hereby authorized to execute such agreements, writings or relinquishments as are necessary or proper for the purpose of carrying said exchange into effect and such agreements or other writings to be executed in duplicate, one to be filed with the commissioner of public lands and one to be delivered to the said board of regents. Said exchange shall be made upon the basis of equal values to be determined by careful valuation of the areas to be exchanged. [L. '17, p. 227, § 1.]

§ 7849. [6655.] State College Lands—Annual Report to Board of Regents.

It shall be the duty of the state land commissioner to make a report to the board of regents of the agricultural college and school of science on or before the first Monday in April, 1899, and on or before the first Monday in April of each succeeding year, which said report shall contain a complete detailed statement:

(1) Of all lands which have been selected under an act of congress approved July 2, 1862, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," and all acts supplementary thereto, and under the act of congress of February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to institutions," which said selections have been approved by the secretary of the interior, for the use and support of agricultural colleges and for a scientific school, which statement shall set forth the lands set apart for the agricultural college and for the school of science in distinct and separate lists: Provided, that the land commissioner shall not be required to include in such annual report a statement of approved selections and locations made in any previous annual report: And provided further, that when the entire amount of the one hundred and ninety thousand acres of land set apart for the use and support of the agricultural college and school of science shall have been selected, located, and approved by the secretary of the interior, and included in any annual report or reports to the said board of regents, that thereafter the land commissioner shall not be required to make such annual report.

(2) Of all lands belonging to the agricultural college and likewise to the school of science sold prior to said first Monday in April, 1899, and on or before the first Monday in April of each succeeding year, which statement shall accurately describe the lands sold, the price received for the same and all moneys received from the sale of [or] lease of said lands or from the sale of timber, stone or hay from said lands: Provided, that the land commissioner shall not be required to include in such annual report a statement of lands sold or moneys received which shall have been included in any previous annual report.

(3) Of the investment of all moneys received from the sale or lease of agricultural college land, or from the sale of timber, stone or hay from said lands, which report shall describe fully the stocks, bonds or other securities in which said moneys shall have been invested, specifying the issuer or issuers, the rate of interest, the time to run, and the face or par value of said stocks, bonds or other securities, and a like report of the disposition of all moneys received from the sale or lease of lands set apart for the scientific school and from the sale of timber, stone or hay from said lands: Provided, that the land commissioner shall not be required to include in any annual report a statement of the disposition of any moneys included in any previous annual report. [L. '99, p. 12, § 1.]

See supra, § 5524, disposition of certain state college lands.

§ 7850. [6659.] Annual Report of State Treasurer to Regents.

It shall be the duty of the state treasurer to make a report to the board of regents of the agricultural college and school of science on or before the first Monday of April, 1899, and on or before the first Monday of April of each succeeding year, which said report shall contain a complete detailed statement:

(1) Of all stocks, bonds or other securities belonging to the agricultural college and school of science which may have been deposited with said treasurer by the land commissioner during the year next preceding said report, together with all other securities belonging to said college which may be in his custody, setting forth in separate statements those which have been derived from the sale or lease of agricultural college lands and those which have been derived from the sale or lease of the scientific school lands.

(2) Of all interest received during the year next preceding said report, on all stocks, bonds or other securities belonging to the agricultural college and school of science which may be or may have been in the custody of said treasurer, and of all premiums which may have been received on securities sold or redeemed during the aforesaid period.

(3) Of all stocks, bonds or other securities belonging to the agricultural college and school of science which may have been paid, redeemed or sold during the year next preceding such report, together with the principal sum or sums remaining in the hands of said treasurer uninvested. [L. '99, p. 14, § 2.]

§ 7851. [6660.] Duties of Board of Regents—Inspection—Report to Legislature.

To the end that the endowment of the agricultural college and school of science may be conserved and increased it shall be the duty of the

board of regents of the said college and school of science at as early a date as practicable to inspect or cause to be inspected the lands set apart for the use and support of the agricultural college and school of science, and to gather or cause to be gathered such information relative to the character, condition and true value of said lands as may be conducive to a wise and advantageous disposition of the same, and to collect and distribute such information as shall facilitate the sale or lease of such lands, as provided by law, and to furnish such information to the land commissioner when called for: Provided, that the expense of collecting and distributing such information shall be paid from the maintenance fund of the college, which said expenses shall not exceed one thousand dollars in any one fiscal year and shall not exceed three thousand dollars in the aggregate: Provided, further, that a complete report of the doings of the board of regents in the collecting and distributing of information and facilitating the sale or lease of said lands, together with the expenses incurred therein shall be included in the annual report of the board of regents to the governor and legislature. [L. '99, p. 15, § 3.]

CHAPTER VII.

APPRAISAL AND SALE OF GRANTED LANDS.

Sale of material on state lands for highway construction, see *infra*, § 8003.

§ 7852. [6661.] Appraisement and Sale—Plats.

Any person or company may make written application to the commissioner of public lands for the appraisement and sale of any lands belonging to the state, except capitol building lands; and the commissioner of public lands shall cause to be prepared blank applications containing such instructions as will inform and aid intending purchasers in making application for the appraisement and sale of any lands. Each application must be accompanied with either cash, certificate of deposit or certified check upon any bank of this state, or postal order made payable to the commissioner of public lands equal in amount to ten cents per acre for the land described in such application, but in no case for a sum less than ten dollars. In case the lands described in such application are sold at the time they are offered for sale, in accordance with such application, the amount of such deposit shall be returned to such applicant, but if such land be not sold, through the failure of the applicant to offer at least the appraised valuation, such deposit shall, upon order of the board of state land commissioners, be forfeited to the state and credited to the general fund. When, in the opinion of the commissioner of public lands, or the board of state land commissioners, a sufficient number of applications have been received for the appraisement and sale of lands in any county or locality, the commissioner of public lands shall cause such lands so applied for to be inspected and classified by one or more state land inspectors, or by one or more members of the board of state land commissioners, as to its character, topography, agricultural and grazing qualities, timber, coal, mineral, stone or rock quarries of commercial value, its distance from any city or town, railroad, river, irrigation canal, ditch or other waterway, and full report thereof to be made to the commissioner of public lands, together with the inspector's judgment as to its present and prospective value, which said report, together with all other

information affecting the same, shall thereupon be considered by the board of state land commissioners and a price per acre fixed for each lot, block, subdivision or tract proposed to be sold in one parcel, which shall not be less than ten dollars per acre for lands granted for educational purposes: Provided, that no more than one hundred and sixty acres of any school or granted lands of the state shall be offered for sale in one parcel; and all lands within the limits of any incorporated city or town, or within two miles of the boundaries of such incorporated city or town, where the valuation of such lands shall be found by appraisement to exceed one hundred dollars per acre, or such other lands as the board of state land commissioners may determine, shall, before the same be sold, be platted into lots and blocks or tracts, and not more than one block or tract shall be offered for sale in one parcel. And the board of state land commissioners is hereby authorized to vacate and annul any street, alley or public place in any plat of any public lands of the state situated outside of the limits of any incorporated city or town when deemed for the best interests of the state and to correct any defect or omission in any plat, or any defect or omission in the procedure with reference to the making or filing thereof in any plat heretofore or which may hereafter be made or filed. The board of state land commissioners may designate or describe any such plat by name or numeral or as an addition to any such city or town and, upon the filing of such plats, it shall be sufficient to describe the lands, or any portion thereof, embraced in such plat according to the designation prescribed by the board of state land commissioners. Such plats shall be made in duplicate and, when properly authenticated in accordance with the directions of the board of state land commissioners, one copy thereof shall be filed in the office of the commissioner of public lands and one copy in the office of the county auditor of the county in which the lands are situated; and said auditor is hereby directed to receive and file such plats without compensation or fees and to make record thereof in the same manner as required by law for the filing of other plats in his office: Provided further, that whenever application is made to purchase less than a section, the said commissioner of public lands may order the inspection of the entire section or sections; and in no case shall any state or public lands, or timber or other materials thereon be sold unless within ninety days prior to the date fixed for the sale the same shall have been appraised by the board of state land commissioners. The board of state land commissioners or the commissioner of public lands may cause any of the public lands of the state to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [L. '09, p. 758, § 2. Cf. L. '95, p. 533, § 17, and p. 534, § 18; L. '97, p. 535, § 11; L. '03, p. 103, § 1; L. '07, p. 751, § 5.]

See *infra*, § 7894, former appraisals void.

Cited in 37 Wash. 125—130.

DISPOSAL BY STATE OF SCHOOL, UNIVERSITY OR GRANTED LANDS: See Remington's Digest, Pub. Lands, §§ 75—77.

Land Co., 74 Wash. 573, 134 Pac. 474; State ex rel. Mason County Power Co. v. Superior Court, 99 Wash. 496, 169 Pac. 994.

§ 75. **Sale and Conveyance by State in General:** Hart Lumber Co. v. Rucker, 15 Wash. 456, 46 Pac. 728; State v. Hewitt

§ 76. — **Authority to Sell:** Callvert v. Winsor, 26 Wash. 368, 67 Pac. 91; State v. Seattle, 57 Wash. 602, 107 Pac.

827, 27 L. R. A. (N. S.) 1188; *State v. Hewitt Land Co.*, 74 Wash. 573, 134 Pac. 474.

§ 77. — **Rights Acquired:** *Brygger v. Schweitzer*, 5 Wash. 564, 32 Pac. 462, 33 Pac. 388; *Bickerton v. Grimes*, 8 Wash. 451, 36 Pac. 252; *State v. Frost*, 25 Wash. 134, 64 Pac. 902.

Improvements—Right of Occupant to Payment: See *Remington's Digest*, Pub. Lands, § 80; *Wilkes v. Hunt*, 4 Wash.

100, 29 Pac. 830; *Pearson v. Ashley*, 5 Wash. 169, 31 Pac. 410; *Wilkes v. Davies*, 8 Wash. 112, 35 Pac. 611, 23 L. R. A. 103; *Hart Lumber Co. v. Rucker*, 15 Wash. 456, 46 Pac. 728; *Brummett v. Campbell*, 32 Wash. 358, 73 Pac. 403.

— **Appraisement:** See *Remington's Digest*, Pub. Lands, § 81; *Wilkes v. Hunt*, 4 Wash. 100, 29 Pac. 830; *Holm v. Prater*, 7 Wash. 207, 34 Pac. 919; *Hart Lumber Co. v. Rucker*, 15 Wash. 456, 46 Pac. 728.

§ 7853. **Authority to Reserve Lands.**

The commissioner of public lands is hereby authorized to reserve from sale, for parks for general public use, not to exceed five (5) acres of land from any tract of land belonging to the state, including tide and shore lands, adjoining or lying near any public highway within the state. [L. '19, p. 87, § 1.]

§ 7854. [6662.] **Vacation of Plats—Replat—Sale.**

When in the judgment of the state board of land commissioners the best interest of the state will be thereby promoted, the said board is hereby authorized and empowered to vacate any plat or plats covering school and granted lands and vacate any streets, alleys and other public places therein situated. Any such lands within the limits of any incorporated city or town or within two miles of the boundary of any incorporated city where the valuation of such land shall be found by appraisement to exceed one hundred dollars per acre shall be replatted by said board into lots and blocks of not more than five acres in a block and disposed of in the manner provided in section 7852: Provided, that the vacation of any such plat shall not affect the vested rights of any person or persons heretofore acquired therein. [L. '03, p. 238, § 1.]

In view of this section the county commissioners have no jurisdiction to vacate plats of tide lands: *State ex rel. Oregon & Wash. R. Co. v. Abraham*, 48 Wash. 215, 93 Pac. 325.

§ 7855. [6663.] **Order of Vacation to be Recorded.**

Said board in the exercise of the power and authority herein conferred shall cause the order made by the board to vacate any plat or plats to be entered in the minutes of said board, and at once forward a certified copy thereof to the county auditor of the county wherein said platted lands are located, and said auditor upon the receipt thereof shall cause the same to be recorded in the miscellaneous deed records of his said county. [L. '03, p. 239, § 2.]

§ 7856. [6664.] **Petition for Replat by Abutting Owners.**

Whenever all the owners and other persons who have a vested interest in the lands abutting on any street, alley or other public place, or any portion thereof, in any of the state granted, tide or shore lands lying outside of any incorporated city or town, which have been platted, or which hereafter shall be platted, shall petition the board of state land commissioners, by filing a petition therefor with the commissioner of

public lands, the board of state land commissioners is authorized and empowered to vacate any such street, alley or public place, or part thereof, and all such streets, alleys and other public places and portions thereof which shall be so vacated shall be platted and appraised in the manner provided for the platting and appraising of similar lands: Provided, that where the area of such streets, alleys or other public places so vacated may be determined from the plat already filed as provided by law it shall not be necessary to survey said street, alley or other public place so vacated, but the area thereof may be determined from such plat already filed. [L. '03, p. 239, § 3.]

§ 7857. [6665.] Plats in Duplicate—Filing and Recording.

All plats provided for in this act shall be in duplicate, and within thirty days after the adoption of any such plat by the board of state land commissioners, one copy thereof shall be filed in the office of the commissioner of public lands, and one copy thereof shall be filed in the office of the auditor of the county in which such land shall be situated and the same shall be entered of record, notwithstanding the said maps or plats may not strictly conform to the city ordinances pertaining to the platting of lands adjoining said incorporated city or town. [L. '03, p. 239, § 4.]

"Act" refers to §§ 7854—7858.

§ 7858. [6666.] Disposal—Preference Rights.

From and after the filing of such plats, as hereinbefore provided, the lots, blocks, and other parcels into which such streets, alleys, or other public places, or parts thereof so vacated shall be so platted may be disposed of as provided by law in the case of similar lands: Provided, that the owner or owners and other persons who have a vested interest in the lands abutting on any of said lots, blocks or other parcels shall have a preference right for the period of sixty days from the final date of the filing of such plats and of the appraising of such lots, blocks or other parcels to purchase such lot, block or other parcel from the state of Washington at the appraised value thereof. [L. '03, p. 239, § 5.]

§ 7859. [6667.] Sale of Timber—Appraisement—Material and Improvements.

When application is made for the purchase of timber, fallen timber, stone, gravel or other valuable materials situated upon public lands of the state, except capitol building lands, the same inspection shall be had as upon an application for the appraisement and sale of lands. No timber, fallen timber, stone, gravel or other valuable materials shall be sold for less than the appraised value thereof; and such timber, fallen timber, stone, gravel or other valuable materials may be sold separate from the land when, in the judgment of the board, it is for the best interests of the state to sell the same, except when the estimated amount of timber shall exceed one million feet to the quarter section, in which case the timber shall be sold separate from the land: Provided, that whenever any public lands except capitol building lands shall lie within the limits of any watershed from or through which is derived the water supply of any city or

town in this state and said city or town shall desire to purchase or condemn the same it may do so, and in case of purchase it shall have the right to buy said land with the timber, fallen timber, stone, gravel or other valuable materials with the land and without a separate appraisement thereof. When such timber, fallen timber, stone, gravel or other valuable materials are sold separate from the land, the full purchase price thereof shall be paid in cash: Provided, that in all cases where timber, fallen timber, stone, gravel or other valuable materials are sold separate from the land the same shall revert to the state if not removed from the land within five years from the date of purchase thereof, except that in all cases when the purchaser is acting in good faith and endeavoring to remove such timber, fallen timber, stone, gravel or other valuable materials, the commissioner of public lands may extend the time for removal thereof for any further period not exceeding five years upon payment to the state of a sum to be fixed by the commissioner of public lands not less than one dollar nor more than two dollars per acre per annum. And the commissioner of public lands shall certify and pay to the state treasurer all sums received for such extensions and the same shall be credited to the fund to which was credited the original purchase price of the materials so sold. In every appraisement under this act, the board of state land commissioners shall separately appraise all improvements placed upon any land of the state and found on such land at the time of appraisement of the land, and shall also appraise all damages and waste committed or suffered upon said land by the cutting or removal of timber, stone, gravel or other valuable materials by the person or persons owning such improvements or their assignors and the damages so found shall be deducted from the appraised value of the improvements and the balance, after deducting such damages and waste, shall be the value of the improvements upon the land, and every such appraisement shall be recorded in the proceedings of the board of state land commissioners: Provided, that this section shall not be considered as affecting the right of the state to receive the full value of the land. If the purchaser of such land be not the owner of the improvements, he shall deposit with the officer making the sale, at the time of the sale, the appraised value of such improvements; and if it be found by the board that the owner of such improvements was not holding adversely to the state at the time of making the improvements, or that said improvements were placed upon the land in good faith by a lessee whose lease had not been canceled or subject to cancellation for any cause, or that such improvements were placed upon the land by mistake, then the board of state land commissioners shall direct the commissioner of public lands to pay and he shall pay to the owner of said improvements the sum so deposited. But if it be found by the board that such improvements were made by persons holding or claiming adversely to the state, or by persons without license or lease from the state, or by a lessee who had not complied with the terms of his lease, then said board shall direct the commissioners of public lands to pay said sum so deposited to the state treasurer, who shall credit the same to the fund into which the proceeds derived from the sale of the land should be paid. If it be found that such improvements were made by a lessee or other person with intent to defraud the state or the intending pur-

chaser of the land from the state, the sum so deposited shall be forfeited to the state and credited as last above provided. For the purpose of determining the value and character of land, timber, fallen timber, stone, gravel or other valuable materials or improvements, the commissioner of public lands or the board of state land commissioners may compel the attendance of witnesses by subpoena, at such place as the commissioner or the board may designate, and examine such witnesses under oath as to the value and character of such lands, materials or improvements and waste or damage thereto. When timber or other valuable materials have been sold separate from the land and have actually been removed therefrom, then such lands may be sold for a sum which, added to the price received for the timber or other valuable materials, will not be less than ten dollars per acre. All sales of timber upon state land shall be made subject to the right, power and authority of the board of state land commissioners to prescribe rules and regulations governing the manner of removal of the timber with a view to the protection of the nonmerchantable timber against destruction or injury by fire or from other causes; and any such rules or regulations shall be binding upon the purchaser of the timber and his successors in interest and shall be enforced by the commissioner of public lands. When the merchantable timber has been sold and actually removed from any land, the board of state land commissioners may classify the land and such portions thereof as may be found most suitable for reforestation may, by order of the board, be reserved from any future sale and when once so reserved shall not thereafter be subject to sale or other disposition. The commissioner of public lands shall certify to the state fire-warden and forester all such reserves so made and thereupon it shall be the duty of the state fire-warden and forester to protect such land and the remaining timber from fire and to reforest the same: Provided, further, that the board of state land commissioners may order the sale of the timber which has been damaged by fire on any lands of the state, except capitol building lands, without an application having been filed or deposit made as herein provided. [L. '15, p. 405, § 2. Cf. L. '09, p. 760, § 3. Cf. L. '95, p. 536, § 23; L. '97, p. 236, § 12; L. '99, p. 252, § 1; L. '01, p. 308, § 1; L. '07, p. 752, § 6.]

"This act": See note to § 7798.

Cited in 37 Wash. 125—130; 75 Wash. 119.

Sale of Timber: See Remington's *Heuston v. Callvert*, 37 Wash. 124, 79 Digest, Pub. Lands, § 78; *State ex rel.* Pac. 791

§ 7860. Sale of Damaged Timber in Clallam and Jefferson Counties.

Wherever the timber on any tract of state land situated in Clallam or Jefferson counties shall have been damaged by the storm which occurred on January 29, 1921, the commissioner of public lands is hereby authorized to sell the timber on said tract when such sale shall, in his judgment, be to the best interests of the state. [L. '21, p. 215, § 1.]

§ 7861. Purchase Price.

When application is made for the purchase of any of the timber so affected, the commissioner may order such inspection as will enable him to

determine the minimum price per thousand feet, board measure, to be charged for such timber and shall thereafter fix such minimum price per thousand feet at which the said timber shall be offered and determine the date of sale of same: Provided, that payment for said timber shall be made according to the scale of the logs cut and removed, under such terms and conditions as the commissioner shall prescribe; and provided further, that a bond to guarantee the performance of any contract or agreement entered into with the state of Washington by the purchaser of said timber may be required at the option of the commissioner of public lands. [L. '21, p. 216, § 2.]

§ 7862. Notice of Sale.

When the commissioner of public lands shall have decided to sell any timber, as provided for in this act, he shall forthwith fix the date of sale and give notice thereof by advertisement published once a week for four weeks next before the time he shall name in said notice, in at least one newspaper of general circulation published in the county in which the timber is situated, which notice shall specify the place, time and terms of sale. The commissioner of public lands is hereby authorized to expend such sum as, in his opinion, may be deemed advisable and necessary for additional advertising of said sale. [L. '21, p. 216, § 3.]

§ 7863. Sale—Public Auction.

The sale of said timber shall be by public auction to the highest bidder and shall be in accordance with the terms and conditions specified in said notice of sale. The county auditor of the county in which the timber is situated shall conduct said sale, under the direction of the commissioner of public lands and shall certify the returns of such sale to the commissioner upon forms prepared for that purpose. [L. '21, p. 216, § 4.]

§ 7864. Confirmation of Sale.

When ten (10) days shall have elapsed after the receipt of such report of sale, if it shall appear to the commissioner of public lands that the sale was fairly conducted, that all the proceedings were regular, and that the best interests of the state shall be subserved thereby, the commissioner shall confirm said sale and shall issue to the purchaser a contract for said timber upon such terms and conditions, conformable with the notice of sale, as he shall prescribe. [L. 21, p. 217, § 5.]

§ 7865. Rules.

The commissioner of public lands shall make such rules and regulations as may be necessary to the carrying out of the provisions of this act. [L. '21, p. 217, § 6.]

§ 7866. [6668.] Appraisal of Improvements.

It shall be the duty of the board of state land commissioners when appraising the value of improvements on state lands, to appraise such improvements at such sum as the improvements add to the value of the

lands, for the purpose of selling the land in the manner provided by law. [L. '07, p. 212, § 1.]

Cited in 75 Wash. 119.

§ 7867. [6670-1.] Time for Removal of Timber.

In all cases where timber on state school and granted land has heretofore been sold separate from the land, the purchaser shall be allowed five years from the date of sale within which to remove said timber: Provided, that the board of state land commissioners may extend the time for the removal thereof for any period not exceeding ten years from the date of first renewal of said contract, upon application being made for such extension, and upon the payment of the sum or rent of one dollar and fifty cents per acre, per annum; the said rental so received to be paid into the various funds as now provided by law: Provided, however, this act shall not operate to grant any extension of time for a longer period than ten years from the first day of June, 1905, and shall only apply to sales made prior to 1905. [L. '11, p. 643, § 1.]

§ 7868. [6670-3.*] Five-year Extension—Conditions.

The owner or owners of any standing or fallen timber heretofore sold by the state of Washington, may, with the approval of the board of state land commissioners have the time in which to remove the same extended for a further period of time not to exceed five years from and after the date upon which it may now be removed upon paying annually in advance six cents (\$.06) per thousand feet of timber as shown by the state cruise, but in no event to exceed the sum of one dollar and fifty cents (\$1.50) per acre: Provided, that such payment is made before the expiration of the term in which the same was to be removed or before the expiration of any extension heretofore or hereinafter granted: And provided further, that before any such extension is granted the applicant shall furnish to the board satisfactory proof that all state, county and other taxes due or payable upon the said timber have been fully paid. [L. '17, p. 328, § 1; L. '15, p. 426, § 1.]

§ 7869. [6671.] Certificate of Appraisement, Notice of.

Immediately upon the appraisement and inspection provided for in this act being made of any land in any county in the state, [and] the commissioner of the public lands shall prepare a certificate of such appraisement showing in detail the facts reported in such appraisement, and he shall file one copy of the same in his office and shall certify one copy and forward it to the auditor of the county in which said land is situated, and the said county auditor shall post it in a conspicuous place in his office, and the said commissioner of public lands shall notify the applicant of the appraisement and of the notice to the auditor, and that said board will allow the applicant twenty days in which to show wherein said appraisement is defective, excessive or unjust, which protest, if any be made and filed, shall be considered by said board, and notice of their action shall be sent to the applicant. [L. '95, p. 536, § 22; L. '97, p. 238, § 13; L. '03, p. 113, § 1.]

"This act": See note to § 7798.

§ 7870. [6672.] Public Sale—Procedure.

When the board of state land commissioners shall have decided to sell any lot, block, tract or tracts of granted lands, or timber, fallen timber, stone, gravel or other valuable materials thereon, it shall be the duty of the commissioner of public lands to forthwith fix the date of sale and give notice thereof by advertisement published once a week for five weeks next before the time he shall name in said notice, in at least one newspaper of general circulation published in the county in which the lands are situated, which notice shall specify the place, time and terms of sale, describing with particularity each parcel of land to be sold and stating the appraised value thereof, and by causing to be posted in a conspicuous place in the office of the auditor of the county wherein such lands are situated a copy of said notice. And the commissioner of public lands shall cause all such lands or materials thereon to be sold and arrange such date of sale so that it will fall on the first Tuesday of the month, except where such Tuesday would fall on a legal holiday, in which case no sales shall be made until the following month. The commissioner of public lands shall cause to be printed in pamphlet form a list of all school, granted or other public lands or materials thereon, or tide or shore lands of the first or second class, or detached tide lands, or harbor area leases or mineral lands required by law to be sold at public auction and the appraised value, where the law provides for appraisement, that are to be sold in the several counties of the state, said lists to be issued each month, at least four weeks prior to the date of sale of such lands or materials enumerated thereon, such lands and materials to be listed under the name of the county wherein located, in alphabetical order, giving the appraised values, character of same and such other information as may be of interest to prospective buyers. Said commissioner of public lands shall cause to be distributed to the auditor of each county in the state a sufficient number of such lists to supply the demands made upon them respectively, as reported by such auditors, not exceeding one hundred copies in any one county. And said county auditors shall keep the lists so furnished in a conspicuous place or receptacle on the counter of the public office of their respective departments, and when requested so to do shall mail copies of such lists to residents of their counties. The commissioner of public lands shall retain for free distribution in his office five hundred copies of said lists, as above set forth, such lists to be kept in a conspicuous place or receptacle on the counter of the general office of the commissioner of public lands; and when requested so to do, the commissioner shall mail copies of said lists each month as issued to any applicant therefor. Proof of publication shall be made by affidavit of the publisher or person in charge of the newspaper publishing the notice of sale and by certificate of the auditor showing the posting of the notice of sale as aforesaid and the receipt of the lists as aforesaid, which shall forthwith be sent to and filed with the commissioner of public lands. The board of state land commissioners is hereby authorized to expend any sum of money, not exceeding fifteen dollars in additional advertising of such sale as the said board shall determine to be for the best interests of the state. Such sale shall take place on the day advertised, between the

hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, in front of the courthouse, or of the building in which the superior court is held, in the counties in which there is no courthouse, and shall be sold at public auction to the highest bidder, on the terms prescribed by law and as specified in the notice hereinbefore provided; and no land shall be sold for less than its appraised value. Such sale shall be conducted under the direction of the board, or the commissioner of public lands; by the county auditor of the county in which the lands are situate; and such auditor shall at once deliver to the purchaser under his hand and seal, a memorandum of his purchase, containing a description of the land purchased, the price bid and the terms of sale, upon the delivery to such auditor, by the purchaser, either in cash or by certified check, or draft drawn upon some bank doing business in this state, or by postal order, of an amount equal to one-tenth of the price of the land by him purchased, payable to the order of the commissioner of public lands; and such auditor shall at once send to the commissioner of public lands such cash or certified check, draft or postal order and a copy of the memorandum delivered to the purchaser, together with such additional report of his doings and proceedings with reference to such sale as may be required by the commissioner of public lands or the board of state land commissioners. If any land so offered for sale be not sold, the same may again be advertised for sale, as provided in this act, whenever in the opinion of the board it shall be expedient so to do; and such land shall again be advertised for sale as provided in this act, whenever any person shall apply to said board in writing to have such land sold and shall agree to pay, at least the appraised price thereof and shall deposit with the commissioner of public lands at the time of making such application, a sufficient sum of money to pay the cost of advertising for such sale, as provided in making original application. [L. '13, p. 93, § 1. Cf. L. '09, p. 763, § 4. Cf. L. '95, p. 538, § 24, and p. 539, § 28; L. '97, p. 238, § 14; L. '07, p. 313, § 1.]

"This act": See note to § 7798.

§ 7871. [6673.] Leases—Same—Procedure.

All leases of state tide lands, and the sale of all tide and shore lands of whatever class, except when sold to persons having the preference right of purchase, and timber and materials of state, school, and granted lands, and harbor areas or mineral lands where, under existing laws, the same can be sold, shall be made in the same manner, under the same notice, and at the same time and place, as provided in the preceding section. [L. '07, p. 315, § 2.]

Lease of state land as subject to collateral attack. *Ann. Cas.* 1912B, 91.

§ 7872. [6674.] Confirmation of Sale.

The members of the said board of appraisers, or the county auditor conducting the sale, shall, upon making sale of any school, or stone, mineral or timber thereon, report such sale to the said board of appraisers, as provided in this act, together with other information touching the same, as the said board shall have prescribed, and within ten days from the date of the reception of such report by the commissioner of

public lands, if no affidavit showing that the interests of the state in such sale were injuriously affected by fraud or collusion shall have been filed with said board, and it shall appear from such report that the sale was fairly conducted, and that the purchaser was the highest bidder at such sale, and that his bid was not less than the appraised value of the property sold, and if the said board of state land commissioners shall be satisfied that the land sold would not, upon being readvertised and sold, sell for at least ten per cent more than the price at which it shall have been sold, and that the payment required by law to be made at the time of making the sale has been made, and the best interests of the state may be thereby subserved, the secretary of the board of state land commissioners, by order of said board shall enter upon his records a confirmation of said sale and thereupon the commissioner of public lands shall issue to the purchaser a contract of sale, as in this act provided. [L. '07, p. 755, § 7. Cf. L. '95, p. 541, § 29; L. '97, p. 240, § 15; L. '03, p. 114, § 2.]

"This act": See note to § 7798.

Cited in 30 Wash. 269; 36 Wash. 671; 42 Wash. 446.

§ 7873. [6675.*] Terms of Sale—Interest—Improvements—Patents—Minerals Excepted—Damages to Owner—Payment.

All state lands shall be sold on the following terms: One-tenth to be paid on the date of sale and one-tenth to be paid one year from the date of issuance of the contract of sale and one-tenth annually thereafter until the full purchase price has been paid: Provided, that any purchaser may make full payment at any time. All deferred payments shall draw interest at the rate of six per cent (6%) per annum. The first installment of interest shall become due and payable one year after the date of the contract of sale and thereafter all interest shall become due and payable annually on said date. All remittances for payment of either principal or interest must be forwarded to the commissioner of public lands: Provided, further, that the board of state land commissioners may, when they deem it for the best interests of the state, sell any of the granted lands of the state in tracts of not more than eighty acres upon the following terms and conditions: One-twentieth of the purchase price to be paid on the date of sale and one-twentieth on the eleventh year thereafter, and one-tenth annually thereafter until the full purchase price has been paid: Provided, further, that before any such lands are offered for sale the board of state land commissioners shall prescribe the extent and character of the improvements that shall be placed upon said lands annually during the first ten years of said contract and said contract shall be subject to forfeiture if the holder thereof shall fail each year to make such improvements as shall be prescribed by said board of state land commissioners before said lands are offered for sale, and the making of such improvements by such contract holder shall, in addition to the payments provided for in said contract, be considered as a part consideration therefor. Every such purchaser shall render to said board between the tenth day of December and the thirty-first day of December of said years a full and complete statement of the character and cost of the improvement placed upon said land during

such year. Any such purchaser shall have the right to improve said lands during any one year to any greater extent than that prescribed by the board of state land commissioners, if he so desires, and he may pay the full purchase price upon said lands at any time prior to the dates of payment as above provided for, if the board of state land commissioners are satisfied that the improvements which he has placed upon said lands are such as to insure the bona fide cultivation and use thereof for agricultural, horticultural and dairying purposes. All deferred payments upon said contract shall draw interest at the rate of four per cent (4%) per annum for the first ten years after the date of sale and thereafter at the rate of six per cent (6%) per annum until the full purchase price has been paid. The object and purpose of this proviso is to encourage the cultivation and improvement of state lands and the use of such lands for agricultural, horticultural or dairying purposes and it shall be construed to be additional to and concurrent with existing laws so far as necessary to the carrying out of such object and purpose. When the entire purchase price of any land shall have been fully paid, such fact shall be certified by the commissioner of public lands to the governor, whereupon he shall cause a patent to be issued to the purchaser. Patents shall be signed by the governor and attested by the secretary of state, with the seal of the state attached thereto, and shall be recorded in the office of the commissioner of public lands, and no fee shall be required for any deed or patent of land issued by the governor, other than the fee provided for in this chapter: Provided, further, that each and every contract for the sale of any state lands, or deeds or patents to such state lands except deeds or patents issued pursuant to contracts heretofore made shall contain the following saving clause: "The party of the first part hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors, and assigns forever, all oils, gases, coal, ores, minerals and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oil, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its successors and assigns forever, the right to enter by itself, its agents, attorneys and servants upon said lands or any part or parts thereof, at any and all times, for the purpose of opening, developing and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain and use all such buildings, machinery, roads and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business hereby expressly reserving to itself, its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved": Provided,

further, that no right shall be exercised under this reservation by the state, its successors or assigns, until provision has been made by the state, its successors or assigns to pay to the owner of the land upon which the rights herein reserved to the state, its successors or assigns are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: And provided further, that if said owner from any cause whatsoever refuses or neglects to settle said damages, then the state, its successors or assigns, or any applicant for a lease from said state, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as shall be necessary to determine the damages which said owner of said land may suffer, and upon payment or tender of the amount so ascertained to the owner by said applicant, he shall be entitled to a lease pursuant to the laws of this state and shall have a preferred right to said lease as of the date of the filing of his application with the commissioner of public lands for said lease. [L. '17, p. 609, § 1; L. '15, p. 409, § 3. Cf. L. '07, p. 749, § 3; L. '95, p. 538, § 25, and p. 541, § 29; L. '97, p. 240, § 16.]

Cited in 20 Wash. 152; 93 Wash. 678.

An applicant of an oil lease of state lands must show that provision has been made to pay to a contracting purchaser from the state the damages that he will sustain by reason of the entry, as such person is the "owner" within the meaning of the act: *State ex rel. Hall v. Savidge*, 93 Wash. 676, 161 Pac. 471.

Property held under a contract of purchase belonging to the state, county or municipality, etc., is subject to taxes, although the purchaser of state lands

holds the same under an executory contract until certain conditions are complied with, as all equitable rights are taxable: *Washington Iron Works v. King County*, 20 Wash. 150, 54 Pac. 1004.

An action to cancel a deed of state lands cannot be maintained by a taxpayer or by a person who has no interest in the property, as the state is a necessary party plaintiff where the land reverts to the state: *Powers v. Webster*, 47 Wash. 99, 91 Pac. 569.

§ 7874. [6676.] Contracts of Sale—Forfeiture.

The purchaser of land under the provisions of this act, except in cases where this act prescribes cash payment, shall enter into and sign a contract with the state, to be signed by the commissioner of public lands on behalf of the state, and in a form to be prescribed by the attorney general, in which he shall covenant that he will make the payment of principal and interest when due: Provided, all interests shall be computed from date contract is issued, and that he will pay all taxes and assessments that may be levied or assessed on such land, and that on a failure to make the payments prescribed in this act when due, and for six months thereafter, that he will, on demand of said board or other authorized officer of the state, surrender the said premises, and upon such failure for six months all rights of the purchaser under the said contract may, at the election of said board of state land commissioners, acting for the state, and without notice to said purchaser, be declared to be forfeited, and when so declared forfeited the state shall be released from all obligation to convey the land. When the payments provided for in this chapter for land, stone, minerals or timber shall have been made in full, the commissioner of public lands shall procure the proper deed of conveyance to be made to the purchaser, but in no case shall final deed of conveyance be issued until after all the purchaser's price and accrued interest has been paid. The contract provided for by this section shall be executed

in duplicate, and one copy shall be retained by the purchaser and the other shall be filed in the office of the commissioner of public lands. All contracts provided for in this section shall be signed by the purchaser and also by the commissioner of public lands on the part of the state, with the seal of the state attached thereto. The commissioner of public lands may, as he deems advisable, extend the time for payment of principal and interest on the contract heretofore issued and contracts to be issued under this act. [Cf. L. '95, p. 542, § 30; L. '97, p. 241, § 17.]

"This act": See note to § 7798.

See notes to § 7968, *infra*.

See *infra*, §§ 11148, 11149, taxation of lands held under contract.

Cited in 18 Wash. 498; 19 Wash. 433; 20 Wash. 152; 100 Wash. 126, 127.

This section applies to contracts for tide lands: *State ex rel. Bellingham Bay Imp. Co. v. Bridges*, 19 Wash. 431, 53 Pac. 545.

The equitable rights under a contract of purchase are taxable: *Washington Iron Works Co. v. King County*, 20 Wash. 150, 54 Pac. 1004. Distinguished in *State v. Frost*, 25 Wash. 134, 64 Pac. 902.

Improvements on tide lands held under contract cannot be assessed as personal property: *Grays Harbor Co. v. Chehalis County*, 23 Wash. 369, 63 Pac. 233.

The state may commence an action to cancel a contract for the sale of tide lands without first tendering repayment of an installment paid by the purchaser

on the contract: *State v. Washington Dredging etc. Co.*, 43 Wash. 508, 86 Pac. 936.

It is not necessary that the record show a formal declaration by the board of state land commissioners that a contract for the purchase of oyster lands is canceled for default in payment, where, notice having been given, the contract is stamped "canceled" after default for a year and nine months, and thereafter, upon contest with a subsequent applicant, the board awards a contract and deed to such subsequent applicant, since the action of the board upon the contest is a sufficient declaration of cancellation: *Frazier v. Wilson*, 35 Wash. 625, 77 Pac. 1064.

Abandonment of state grant of public land. 19 Ann. Cas. 375.

§ 7875. [6677.] Notice of Delinquency and Extension of Time.

The commissioner of public lands shall notify the purchaser of the land in each instance when payment on his contract is overdue, and that he is liable to forfeiture if payment is not made within six months from the time the same became due, unless the time be extended by the commissioner on a satisfactory showing as above provided. [Cf. L. '95, p. 543, § 31; L. '97, p. 242, § 18.]

Cited in 33 Wash. 385; 35 Wash. 630.

§ 7876. [6678.] Contracts Subject to Forfeiture, When.

All contracts issued by the state of Washington to purchasers of school or other lands which are found to be delinquent in payment of interest two years from time of first payment, and which have not been extended by law, shall be declared forfeited by the commissioner of public lands unless such delinquent interest shall be paid to the state in accordance with notice hereinafter provided; that the commissioner of public lands shall notify the holder of such contract in each instance where payment of interest is overdue, and that unless payment is made within six months from the date of said notice, his contract will be canceled and the land shall revert to the state. [L. '97, p. 244, § 27.]

Compare L. '95, pp. 54, 55.

Cited in 19 Wash. 432.

§ 7877. [6678-1.] Sale of Grain on State Lands.

Whenever the state of Washington becomes the owner of any growing crop, or grain grown on any lands of the state, by reason of the forfeiture, cancellation or termination of any contract or lease of said lands, or from any other cause, the commissioner of public lands is authorized to arrange for the harvesting, sale or other disposition of the grain or crop in such manner as he deems for the best interests of the state: Provided, that the sale or disposition of any such grain or crop shall first be authorized by the board of state land commissioners. [L. '15, p. 267, § 1.]

§ 7878. [6678-2.] Disposition of Proceeds.

The proceeds from the sale of any grain or crop grown on state lands, shall be paid by the commissioner of public lands into the state treasury and credited to the same fund as the rental of said lands would be credited. [L. '15, p. 268, § 2.]

§ 7879. [6680.] Subdivisions of Tracts, Procedure to Obtain—Mistake or Fraud in Sale, Effect of.

Whenever the holder of any contract of purchase or [of] any state or school land shall surrender the same to the commissioner of public lands with the request to have the same divided into two or more tracts, it shall be lawful for the commissioner to issue the same provided the proposed subdivision shall not be less than the regular government or public subdivisions, and provided that no new contract or lease shall issue while there is due and unpaid any interest, rental or taxes on the land held under said contract or lease, nor in any case where the commissioner shall be of the opinion that the state security would be impaired or endangered by the proposed division; and for all new contracts or leases a fee of two dollars for each new contract or lease so issued shall be paid by the applicant, and said fee shall be paid into the state treasury with the other fees of the office. Any sale or lease of state lands made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation shall be void, and the contract of purchase or lease issued thereon shall be of no effect, but the holder of such contract or lease shall be required to surrender the same to the commissioner of public lands, who shall, except in the case of fraud on the part of the purchaser, cause the money to be refunded to the holder thereof, provided that the same has not been [paid] into the state treasury. [L. '03, p. 114, § 3.]

Cited in 66 Wash. 132.

This section applies only to executory contracts, and not to sales that have

been fully executed by delivery of the state deed and full payment of the price: State v. Ort, 66 Wash. 130, 119 Pac. 21.

CHAPTER VIII.**LEASING OF SCHOOL AND GRANTED LANDS.****§ 7880. [6681.] Term of Lease—Deposit.**

All school and granted lands of the state of Washington may be leased for a term of five years or less to the highest bidder at public

auCTION in the following manner: Any person or persons desiring to lease any of such lands shall make application in writing to the commissioner of public lands of this state; each application shall be accompanied with a deposit of ten dollars, such deposit to be in the form of a draft on some bank, a postoffice or express money order, or may be paid in cash. In case the lands so applied for shall be leased at the time they are offered for lease, then such deposit shall be returned to such applicant by the commissioner of public lands; but if the land shall not be leased when so publicly offered for lease, then such deposit shall be declared forfeited to the state, and the commissioner of public lands shall pay the said deposit over to the state treasurer, who shall place the same to the credit of the general fund of the state. [L. '15, p. 411, § 4. Cf. L. '03, p. 115, § 4; L. '95, p. 544, § 32; L. '97, p. 242, § 19.]

See *infra*, § 8018 et seq., leasing mineral lands.

Cited in 23 Wash. 83; 39 Wash. 409; 42 Wash. 443; 108 Wash. 294.

The commissioner of public lands acts upon applications to lease lands at his own discretion, and is under no obligation to offer lands for lease: *State ex rel. Pelton v. Ross*, 39 Wash. 399, 81 Pac. 865.

Mandamus will lie to compel the commissioner of public lands to reinstate a lease and accept rent; since the right of appeal is given only from decisions of the state board of land commissioners

and not from orders of the commissioner: *State ex rel. Smith v. Ross*, 42 Wash. 439, 85 Pac. 29.

Subject to the congressional restriction that no more than one section of grazing land be leased to one person, the commissioner of public lands may lease granted lands to the highest bidder, under this section, or exercise his discretion in rejecting all bids under section 7889, *infra*: *State ex rel. McKee v. Savidge*, 108 Wash. 292, 183 Pac. 111.

§ 7881. [6682.] Lists to County Auditors.

When, in the judgment of the commissioner of public lands, a sufficient number of applications have been received from any one county, the said commissioner shall then certify a list of such lands so applied for, and any other lands he may deem advisable to offer for lease at the same time, to the auditor of the county in which such lands are situated, fixing the date when such lands shall be offered for lease and the character of the land, whether agricultural, pastoral or scab: Provided, the agricultural lands shall not be leased for less than ten cents per acre. [L. '97, p. 242, § 20.]

§ 7882. [6683.] Posting Lists.

Upon receipt of such list so certified, the county auditor shall proceed to post said list for a period of thirty days prior to the date of leasing, in some conspicuous place in his office and elsewhere in the county, as the commissioner may direct. [Cf. L. '95, p. 545, § 37; L. '97, p. 243, § 21.]

§ 7883. [6684.] Yearly Rental in Advance.

The person or persons leasing any of such lands, shall pay over to the county auditor the first year's rent, in accordance with his bid, which payment shall be in the form of a certified check or certificate of deposit on some bank in this state, or may be paid in cash; all rent thereafter shall be paid annually in advance to the commissioner of public lands. [L. '97, p. 243, § 22.]

§ 7884. [6684-1.] Limit on Value of Improvements on Leased Lands.

The commissioner of public lands, at the time of fixing the rental value of any lands of the state, which are to be offered for lease, shall fix the limit of the value of improvements that may be placed upon said lands by any lessee of the state, and upon the expiration of any such lease the board of state land commissioners shall not appraise said improvements in an amount exceeding the limit so fixed by the commissioner of public lands: Provided, that at any time during the life of said lease the commissioner may extend the limit of the value of improvements which may be placed on the lands covered by said lease, if he deems it advisable for the best interests of the state. Such extension shall be made by written order, which shall be filed with the lease in the office of the commissioner, and unless so made and filed shall not be effective. [L. '15, p. 420, § 18.]

§ 7885. [6684-2.] Holding Over After Expiration of Lease—Removal of Improvements.

No lessee of state lands, after the expiration of his said lease, shall without the written consent of the commissioner of public lands and then only upon such terms and conditions as such written consent shall prescribe, remain in possession of said lands or the improvements thereon after the termination or expiration of said lease. All improvements placed upon state lands under lease, during the term of said lease, which remain upon said lands sixty days from the termination or expiration of said lease, shall become the property of the state of Washington and be considered, except as herein provided, a part of the land upon which they are located: Provided, however, that if said lands are sold within a period of three years from the termination or expiration of said lease, then the purchaser at such sale shall pay to the owner of said improvements the appraised value thereof as determined by the board of state land commissioners: Provided, further, that at any time within sixty (60) days after the termination or expiration of any such lease the owner of said improvements shall be entitled to remove such of said improvements as can be removed without injury to said lands: Provided, further, that any improvements placed upon any state school or granted lands without written authority or after the expiration of a written lease shall become the property of the state of Washington and be considered a part of the land. [L. '15, p. 420, § 19.]

§ 7886. [6685.] Returns of County Auditors.

When any of such lands shall have been so leased by the county auditor, the said auditor shall at once proceed to certify a list of such lands to the commissioner of public lands, giving the name of the lessee, the postoffice address, term of lease, lease price per annum, amount paid on lease, and any other information required by the commissioner of public lands; the auditor shall also forward to the commissioner one certified check, draft or postal order, payable to the order of the commissioner of public lands, for all moneys so paid to him on leases at the time of their sale. The commissioner shall issue two receipts, one to the auditor for the total amount of money so received, and a receipt to

each lessee, which shall be in duplicate, the original receipt to be sent to the lessee and the duplicate thereof kept in the office of the commissioner. The commissioner shall pay the money over to the state treasurer and take his receipt therefor: Provided, that lands held under lease shall not be offered for sale, or sold, during the life of the lease, except upon application of the lessee. [L. '15, p. 412, § 5. Cf. L. '97, p. 243, § 23; L. '03, p. 115, § 5.]

Cited in 23 Wash. 84; 33 Wash. 388.

§ 7887. [6686.] Leases Executed in Duplicate.

Upon receipt of such certified list and moneys paid from the county auditor, the commissioner of public lands shall proceed to issue a lease to the lessee, upon a form to be prescribed by the attorney general. All leases shall be in duplicate, both to be signed by the lessee and by the commissioner of public lands on behalf of the state, with the seal of the commissioner of public lands attached thereto; the original lease to be forwarded to the lessee and the duplicate to be kept in the office of the commissioner of public lands. [L. '97, p. 243, § 24.]

Cited in 42 Wash. 446.

§ 7888. [6687.] Notice of Delinquency and Forfeiture.

The commissioner of public lands shall keep a full and complete record of all leases so issued and payments made thereon, and not more than forty nor less than thirty days before the time such rental becomes due the commissioner of public lands shall cause to be mailed to each lessee whose rental will become due and payable during said period of forty days a notice stating the date upon which the rental falls due and the amount thereof; and if such rental be not paid on or before the date the same becomes due, according to the terms of the lease, the commissioner of public lands shall declare a forfeiture, cancel the lease and eject the lessee from the land: Provided, that the commissioner of public lands may extend the time for payment of annual rental not to exceed one year when, in his judgment, the interests of the state will not be prejudiced thereby. [L. '15, p. 413, § 6. Cf. L. '97, p. 244, § 25; L. '09, p. 766, § 5.]

Cited in 33 Wash. 385; 35 Wash. 630; 42 Wash. 446; 79 Wash. 481.

Pac. 29; State ex rel. Abbott v. Ross, 62 Wash. 82, 113 Pac. 273.

Notice of Cancellation: See Remington's Digest, Pub. Lands, § 114; State ex rel. Smith v. Ross, 42 Wash. 439, 85

A lease cannot be canceled by the land commissioner for any cause except non-payment of rent: State ex rel. Bussell v. Callvert, 33 Wash. 380, 74 Pac. 573.

§ 7889. [6688.] Bids, Rejection of.

The commissioner of public lands or the auditor may reject any and all bids when the interests of the state shall justify it: Provided, that if the commissioner of public lands or the auditor shall reject any such bid he shall forthwith return to the lessee any moneys paid, upon the return of any and all receipts issued to the lessee. [L. '97, p. 244, § 26.]

See note to § 7880, supra.

Cited in 95 Wash. 338; 108 Wash. 294.

§ 7890. [6689.] Improver's Preference Right to Lease.

The owner of improvements placed on lands held under contracts from the state, where such contracts are forfeited to the state, shall have a preference right to lease any of such lands for a period of ninety days from the cancellation of such contracts by the state in the following manner: The owner of such improvements shall make application in writing, certifying under oath as to the character and value of such improvements, for the lease of such lands, setting forth the amount bid for the lease of same, which bid shall be considered by said commissioner, and if deemed sufficient and to the best interest of the state to accept said bid, the said commissioner shall proceed to issue a lease to such bidder as provided in section 7886, upon receipt of the first year's rent in accordance with such bid: Provided, that if such lands are not leased as above provided in this section the same may be leased or sold as provided for the lease or sale of other school and granted lands. [L. '97, p. 245, § 29.]

"Section 7886" substituted for § 23 of the act of 1897, although § 24 (7887 herein) may have been intended.

Cited in 39 Wash. 404.

§ 7891. [6690.] Lessee's Right to Re-lease—Deposit—Appraisal.

If, at the expiration of any lease, or any renewal thereof, the lessee desires to re-lease the lands covered thereby, he may make application to the commissioner of public lands for a re-lease. Such application shall be made within thirty days after the expiration of the lease and shall be in writing and under oath, setting forth the character and value of all improvements existing on the land, the name and postoffice address of the owner thereof, the purpose for which he desires to re-lease the land, the amount considered by such lessee as the reasonable annual rental value thereof and such other information as the commissioner of public lands may require, and shall be accompanied with a deposit of ten dollars, which deposit, if the land be not leased, through the failure or refusal of the applicant to accept a lease at the rate fixed by the commissioner of public lands, shall be forfeited to the state and by the commissioner paid to the state treasurer and credited to the general fund of the state. The commissioner of public lands may, upon the filing of such application, cause the lands to be inspected by a state land inspector; and if he deems it for the best interests of the state to re-lease said lands, he shall fix the rental value thereof and, upon receipt of the first year's rental, together with the fees required by law, the commissioner of public lands shall issue to the applicant a renewal lease for any period not exceeding five years. The commissioner of public lands shall notify the applicant by mail, of the rental value fixed, and if, within thirty days after the date of such notice, the applicant fails or refuses to pay to the commissioner of public lands the first year's rental together with the statutory fee for issuing a lease, the commissioner of public lands may cause the improvements existing upon the land to be appraised, in the same manner as in the case of the sale of land, offer the land for lease at public auction to the highest bidder, as provided for original leases, and if the successful bidder be not the owner of the improvements, he shall deposit with the officer making the sale the appraised value of the improvements. The amount so deposited

as the appraised value of the improvements, together with the first year's rental and the fees required by law, shall be transmitted to the commissioner of public lands and, upon confirmation of the lease by the commissioner of public lands, the amount so deposited in payment for the improvements shall be disposed of by the commissioner of public lands in the same manner as in the case of the sale of the land: Provided, that no bid shall be received for less than the minimum price fixed by the commissioner of public lands. [L. '15, p. 413, § 7. Cf. L. '97, p. 245, § 30; L. '99, p. 77, § 1; L. '09, p. 766, § 6.]

Cited in 75 Wash. 119.

§ 7892. [6691.] Water Rights—Removal of Improvements.

At any time during the existence of a lease the lessee may, with the consent of the board of state land commissioners, first obtained, by written application, showing the cost and benefits to be derived thereby, purchase or acquire a water right in order to irrigate the land leased by him, and if such water right shall become a valuable and permanent improvement, then, in case of the sale or lease of such lands to other parties, the old lessee shall be entitled to receive the value thereof as in case of other improvements which he may place upon said land. Improvements made upon school, granted and other lands by lessees from the state in cases in which the lessee yields his lease to the state prior to any application to purchase the land so leased, such as are capable of removal without damage to the land, may be removed by the original lessee, or at his option may remain subject to purchase, by any purchaser who shall apply to purchase the land within a period of three years from the expiration of said lease. [L. '03, p. 116, § 7. Cf. L. '95, p. 546, § 41; L. '97, p. 245, § 31.]

This section leaves no discretion in the commissioner of public lands where a qualified person has complied with the provisions of the statute: *State ex rel. Hall v. Savidge*, 93 Wash. 676, 161 Pac. 471.

have been sold by the state, under section 7873, *supra*, reserving to the state all oils, gases and minerals and the right to enter for the purpose of taking the same: *State ex rel. Hall v. Savidge*, 93 Wash. 676, 161 Pac. 471.

This section applies to lands which

§ 7893. [6692.] Rights of Assignee.

Each assignee of a bona fide purchaser or lessee of any of the state school and granted lands is subject to and governed by the provisions of the law applicable to the purchaser or the lessee of whom he is the assignee, and he shall have the same rights in all respects as the original purchaser or lessee of the same class of lands: Provided, the assignment is approved and entered of record by the commissioner of public lands. No lessee or assignee of any lease of state lands leased as scab or pasture lands shall be permitted to use the same for any other purpose than that expressed in the lease: Provided, said lessee or his assigns may be permitted to clear, plow and cultivate all or any part thereof upon surrendering the said lease and requesting the commissioner of public lands to issue an agricultural lease in lieu thereof; upon the payment of the fixed rental under the appraisalment of said land the commissioner shall issue a new lease for the unexpired term thereof. [L. '03, p. 116, § 8.]

§ 7894. [6693.] Old Appraisements Void.

All appraisements of school and granted lands heretofore made under existing laws, where sales have not yet been made, are hereby annulled, and all such lands shall be appraised and sold or leased as herein provided. [L. '95, p. 548, § 47; L. '97, p. 247, § 36.]

§ 7895. [6694.] Funds, How Kept.

All funds arising from the sale of lands granted to the state of Washington, for any purpose, shall be held intact for the purpose for which they were granted. Lands, when selected and assigned to said grant, shall not be transferred to any other grant, nor shall the moneys derived from said lands be applied to any other purpose than for that of the grant to which they have been assigned. [L. '95, p. 548, § 48; L. '97, p. 247, § 37.]

CHAPTER IX.**CAPITOL LAND GRANT.****§ 7896. [6695.] Public Building Fund.**

All funds arising from the sale of lands granted to the state of Washington for the purpose of erecting public buildings at the state capital shall be held intact for the purpose for which they were granted. Lands when selected and assigned to said grant shall not be transferred to any other grant, nor shall the moneys derived from said lands be applied to any other purpose than for the erection of buildings at the state capital. [L. '93, p. 186, § 1.]

§ 7897. [6696.] Sales—Records—Filing.

. . . . Provided, that all records of sales made by the commission shall be filed in the office of the commissioner of public lands, and all other records of said commission shall be filed with the state auditor. [L. '09, p. 124, § 1.]

"Commission" refers to state capitol commission, abolished, by § 10893.

See *infra*, § 10766, duties devolve upon State Capitol Committee.

Former laws cited in 8 Wash. 415; 13 Wash. 314; 24 Wash. 418, 419.

§ 7898. [6697.] Capitol Building Lands.

All lands granted to the state by the federal government for the purpose of erecting public buildings at the state capitol shall be known and designated as "Capitol building lands." None of such lands, nor the timber or other materials thereon, shall hereafter be sold without the consent of the state capitol commission and only in the manner as herein provided. [L. '09, p. 125, § 2.]

§ 7899. [6698.] Appraisement and Sale—Procedure.

The state capitol commission shall cause said lands to be appraised and prepare an abstract or record of all the capitol building lands with such maps and other data as may be deemed necessary to properly show in detail and by legal subdivision the location thereof, and of the timber and other materials thereon, and the character and value thereof, and

such record shall be open to inspection to anyone desirous of bidding on any such lands or the materials thereon. The commission shall seek proposals by advertising in the public press or otherwise, within or without the state, for the sale of such lands in tracts not to exceed one hundred and sixty acres in extent, and readvertise and reseek other new proposals or bids as often as said commission shall deem necessary, and may sell any such lands at public auction, with a view to obtaining the full market value of said lands, announcing the times, terms and particulars of sale as is now provided for sale of other state lands: Provided, however, the commission may fix times at which offers shall be received on any or all capitol lands, or materials thereon, and the commission may reject or accept any or all such bids but no bids shall be accepted from any bidder for any tract of land or materials on any tract which is not the highest bid offered, except where any bidder has bid on more than one tract his total bids may be taken into consideration in determining the best bid: Provided further, that the commission may sell the timber or other materials separate from the land, and said commission shall fix the time in which such timber, or other materials shall be removed from the lands, and may provide that the purchaser of timber or other materials separate from the land shall not be limited as to the time of removal thereof upon payment to the state for the use of such lands upon which such timber or other materials are situated of an annual rental to be fixed by the commission at or before the time of sale: Provided further, that the commission may lease any of the capitol building lands for agricultural purposes for a period of not exceeding five years and under such terms and conditions as the commission may deem advisable, but all improvements made on any such lands by a lessee thereof shall revert to the state at the expiration of the lease. [L. '11, p. 325, § 9. Cf. L. '09, p. 125, § 3.]

See notes to § 7897.

§ 7900. [6699.] Regulation of Sales—Payments.

The commission shall make necessary rules under which proposals or bids for the purchase of land, timber or other materials shall be received, and shall fix the terms of the sale thereof: Provided, that at least one-fifth of the purchase price of each tract of land sold shall be paid at the time of sale, and the balance shall be distributed in such number of equal annual payments, not exceeding ten, as the purchaser may elect, with six per cent interest, payable annually, on the deferred payments; but the purchaser may at any time pay the entire amount then remaining unpaid, with interest to the date of such payment: And provided further, that the purchase price of all timber or other materials when sold separate from the land shall be paid in cash at the time of sale: And provided further, that in case of the sale, on deferred payments, of any tract of land, where the timber thereon constitutes its principal source of value, all unpaid installments of the purchase price shall be paid before any timber is removed therefrom. [L. '09, p. 126, § 4.]

See notes to § 7897.

§ 7901. [6700.] Sale at State Capital—Proceeds—Plans for Capitol Building.

All sales shall take place at the state capitol and the proceeds of such sale of lands, or the timber or other materials shall be paid into the capitol building fund to be used as in this act provided. All contracts for the construction of capitol buildings shall be let after notice for proposals or bids have been advertised for at least four (4) consecutive weeks in at least three newspapers of general circulation throughout the state. [L. '11, p. 326, § 10. Cf. L. '09, p. 126, § 5.]

§ 7902. [6701.] Conveyances, Manner of.

Upon performance by the purchaser of all such conditions as shall have been fixed by the commission for the sale of any such lands or the timber or other material thereon, conveyances shall be made therefor by deed executed by the governor[,] attested by the secretary of state, to the extent of the interest so sold to such purchaser. [L. '11, p. 326, § 11. Cf. L. '09, p. 127, § 6.]

See notes to § 7897.

§ 7903. [6702.] Commission—Assistants—Expenses.

The commission may employ such cruisers, draftsmen, engineers, architects or other assistants as may be necessary for the best interests of the state in carrying out the provisions of this act, and all expenses incurred by the commission, and all claims against the capitol building fund shall be audited by the commission and presented in vouchers to the state auditor, who shall draw a warrant therefor against the capitol building fund as herein provided or out of any appropriation made for such purpose. [L. '11, p. 326, § 12. Cf. L. '09, p. 127, § 7.]

See notes to § 7897.

"Act" refers to §§ 7897—7904.

§ 7904. [6703.] Proceeds, to Capitol Building Fund.

All sums of money received from sales made by the commission shall be paid into the capitol building fund in the state treasury, and are hereby appropriated for the purposes of this act. [L. '09, p. 127, § 8.]

See notes to § 7897.

"Act" refers to §§ 7897—7904.

§ 7905. [6704.] Acquisition of Land for Capitol Site.

The state capitol commission shall have power in the name of the state to acquire by gift, donation, purchase, or condemnation for capitol building purposes any or all that property situate and lying north and west of the "old capitol site," west of Water Street and extending to the Northern Pacific right of way on the north and the bay or tide water on the west, the same being blocks one (1), two (2), three (3) and four (4) of Capitol addition to Olympia. All costs in so acquiring such property shall be paid out of the capitol building fund and said commission is authorized to pay the same as a part of the expenses connected with the

construction of the capitol building, as provided in this chapter. [L. '09, Ex. Sess., p. 58, § 1.]

See notes to § 7897.

§ 7906. [6704-1.] Construction of Capitol Buildings.

It is hereby declared to be the purpose and intention of this act:

(A) To provide for the paying off, canceling or refunding, by the issue of bonds therefor, the present outstanding warrant indebtedness against the capitol building fund and the interest due and unpaid thereon at the time of the payment, cancellation or refundment thereof;

(B) To acquire and in the manner authorized, the property described in section 1 of chapter 20, Laws 1909, special session, approved August 23, 1909, and to use such lands in conjunction with the lands belonging to the state and known as the "Sylvester Site" or "Old Capitol Site" for the erection and building thereon of a group or system of buildings for capitol purposes, and for the beautifying, parking and laying out grounds about such capitol buildings, all of which grounds or land shall hereafter be known as "Capitol Place";

(C) To build on such "Capitol Place" a series or group of buildings for state official purposes. The main or principal building to be built on the foundation heretofore erected as the foundation for a capitol building, and such main building, when built, to contain the principal executive offices of the state and the rooms and halls for the use of the legislature, which building shall be known, when completed, as the "Capitol," the other buildings to be grouped around and adjacent to said "Capitol" and to be built from time to time as needed;

(D) For the purpose of providing adequate quarters for the supreme court and its officers, and offices for the attorney general, and the state law library, thereby relieving the present congested condition of office quarters in the present building now used for capitol purposes, as soon as plans can be provided therefor there shall be erected as one of the capitol buildings on said "Capitol Place" a building to be known as the "Temple of Justice," for the purpose of housing the departments aforesaid, the approximate cost of said building to be three hundred thousand dollars;

(E) That the capitol commission shall without delay cause complete topographic and profile maps to be made of the lands composing "Capitol Place," and shall furnish the same at a price to be fixed by the commission to architects seeking to offer plans for "Capitol Place," and said commission shall fix a time not later than the first day of August, 1911, for receiving ground plans for a series or group of buildings on said "Capitol Place," showing the main building or "Capitol," a court building or "Temple of Justice" and at least two other buildings for general offices, and accompanying said plans shall be submitted complete plans and specifications for the construction of said "Temple of Justice" building, and with such further details as to the grounds or buildings, or both, as the capitol commission may call for. The commission may reject any and all plans and may call for new plans from time to time, or may select or adopt all or part of any plan or plans submitted and may enter into the usual contract or agreement with any architect or architects for compensation for plans adopted, or may enter into any contract or agreement for

recommendation to the legislature for compensation for any plan or plans adopted in whole or in part, and do any and all things whatsoever to carry out the provisions, purposes, and intent of this act to the end that, as speedily as consistent with economy, suitable, adequate, and commodious buildings and grounds may be provided for official purposes, and that to this purpose, from time to time, new buildings, or additions to buildings theretofore constructed, except additions to the main building, may be constructed, all in accordance with a general plan, and so as not to interfere with the symmetry, grandeur, or architectural beauty of the whole system or group;

(F) That all buildings to be built as herein provided shall be of absolute fireproof construction;

(G) That the appropriation or appropriations hereinafter made, or provided for in any subsequent legislation, shall not prohibit the capitol commission from proceeding, should sufficient funds be received from the sales of capitol building lands or materials thereon (but shall be deemed an authorization), to construct the other buildings or to acquire or improve the grounds used for capitol purposes as herein provided, or to further carry out the purposes of this act. [L. '11, p. 319, § 1.]

Cited in 91 Wash. 13.

§ 7907. [6704-2.] Bonds to be Negotiated.

As defined to be the purpose in section 7906 the said capitol commission may proceed at once to issue negotiable annual interest bearing bonds in an amount not exceeding four million dollars against the capitol building fund and to sell the same or exchange the same for the paying off, refunding and canceling of the present outstanding warrants against the said capitol building fund, including the interest due and unpaid thereon at the time of such payment, cancellation or refunding thereof and for repaying to the general fund of the state the advancements made therefrom to the capitol building fund under this or any other act. Such bonds shall bear a rate of interest not to exceed five per cent per annum, and shall be issued in accordance with the provisions hereinafter defined. The proceeds of the bonds herein authorized to be issued shall be used: 1st, in the payment of all outstanding warrants and interests thereon against the capitol building fund; 2d, in repaying to the general fund the advancements made therefrom to the capitol building fund; 3d, for the carrying out of the other purposes mentioned in section 7906. The capitol commission may issue and sell all or any part of said bonds at any one time or from time to time as in their discretion seems best, or may exchange any of said bonds in payment in all or in part for any work done under the provisions of this act. The capitol commission may in its discretion allow a brokerage commission of not to exceed one-eighth of one per cent on the bonds issued, said commission to be paid from the proceeds of the sale of such bonds. The state of Washington hereby guarantees the payment of the principal and the interest on all bonds issued under the provisions of this act. [L. '11, p. 321, § 2; L. '13, p. 139, § 1.]

See notes to § 7897.

§ 7908. [6704-3.] Construction of Temple of Justice.

The state capitol commission, as soon as it shall have adopted general plans for the construction of buildings on said "Capitol Place" and shall have adopted plans and specifications for the said "Temple of Justice," shall proceed under such terms and conditions as the commission may provide, to call for bids and make contracts for the construction and completion of said "Temple of Justice." For the purpose of the construction of said "Temple of Justice" and for acquiring the lands authorized to be acquired by chapter 20, laws 1909, special session, or so much of said lands as the commission may deem expedient at the time to so acquire, the commission is hereby authorized to issue bonds as in this act provided to the extent of three hundred and fifty thousand dollars (\$350,000), and until such time as said bonds are issued and sold, and for the purpose of providing, without delay, available funds to construct such building and acquire such lands there is hereby appropriated out of the general fund of the state the said sum of three hundred and fifty thousand dollars which amount so appropriated from the general fund shall be deemed a temporary loan only from said general fund and to the amount only as may be needed for the purposes named and until repaid to the general fund from the proceeds of the sale of the bonds as herein authorized: Provided, the commission may sell all or part of said bonds at any one time or may exchange any of said bonds in payment in all or in part for the building of said "Temple of Justice," as may be provided in the contract for the construction thereof or by any subsequent agreement. [L.'11, p. 321, § 3.]

See notes to § 7897.

§ 7909. [6704-4.] Bonds—Interest-bearing Coupons.

Whenever the commission shall have been authorized to do so, as in this act or any further act, to issue bonds it shall issue negotiable annual interest-bearing coupon bonds, in denominations of one thousand dollars, payable in five years, or any multiple of five years up to twenty years, but if issued for a longer period than five years, the state to have the right, through the capitol commission, or its successor or successors in such functions, to pay or refund the same at any five-year period during the life of such bonds. Bonds authorized under this act shall bear interest not to exceed five per centum per annum, such bonds and all interest coupons thereof payable at the office of the state treasurer, and no coupon shall draw interest after the date named in such coupons unless there be no money in the treasury to pay the same and the treasurer shall stamp thereon "Not paid for want of funds," giving the date of such indorsement, in which event such coupon so stamped shall from such date draw the same rate of interest as it represented on the bonds until it is finally called for payment by the state treasurer. Notice of the time of payment of any bond or coupon shall be made by registered mail to the last known address of the holder thereof as shown on the record of the state treasurer kept for such purpose: Provided, no notice shall be required of any payment to be made of any coupon or bond on date named in such coupon or bond. Interest coupons shall be detached by the state treasurer at his office at the time of payment. No bonds shall be sold or

exchanged for less than the face value thereof, and the commission may, in the call for the sale of any bonds provide that such bonds shall be issued only as deemed necessary by the commission, and the commission may issue a new call at any time, or may offer any such bonds for sale from time to time without any formal notice or call for bids thereon. The commission may issue new bonds to take up any issue of bonds theretofore issued, or to take up any issue of warrants, that may have been issued for any purpose authorized in this act or any future act, and the reissue of any bonds or warrants or the issue of any bonds or warrants to take up any outstanding bonds or warrants or the paying out of any funds raised by the sale of any bonds or warrants shall not be deemed an increase in the amount authorized to be expended or indebtedness created under the provisions of this act. [L. '11, p. 322, § 4; L. '13, p. 140, § 2.]

See notes to § 7897.

§ 7910. [6704-5.] Purchase of Bonds.

Whenever the capitol commission shall offer any bonds for sale, and there shall be in the permanent school fund, or other permanent or investment fund, sufficient uninvested funds to cover the purchase of such issue of bonds or any part thereof, the board, officer or officers, authorized to invest any such fund may invest the same in any of said bonds: Provided, however, whenever any of said bonds are purchased by said school fund or other permanent or investment fund the capitol commission, or the board, commission or officer authorized to succeed it in such functions, may pay any or all of such bonds, so held by the permanent school fund or such other fund at any time there is sufficient money in the capitol building fund for that purpose: And provided further, that any and all bonds purchased by any of the permanent funds as in this section provided, shall, for the purposes of such investment, be deemed in all respects state general bonds and shall be guaranteed both principal and interest by the general fund of the state. [L. '11, p. 323, § 5.]

See notes to § 7897.

§ 7911. [6704-6.] Vouchers Signed for Claims.

All claims authorized to be paid under this act except as otherwise provided or intended, shall be by vouchers signed by the governor as chairman of the capitol commission and attested by the secretary or acting secretary thereof, and warrants drawn thereon by the state auditor against the capitol building fund, or other fund or appropriation authorized to be used for such purpose. [L. '11, p. 324, § 6.]

§ 7912. [6704-7.] Interest Paid from General Fund.

All interest that may become due on bonds or warrants issued by the capitol commission shall be guaranteed by the state, and such interest shall be paid out of the general fund of the state: Provided, however, that any and all expenditures made out of the general fund shall be deemed a loan from said general fund and a debt against the capitol building fund and shall be repaid to the general fund from the proceeds of the capitol land grant after all other claims against the capitol build-

ing fund shall have been paid. Interest payments made out of the general fund as herein authorized may be made when due by the state treasurer and the state auditor shall draw his warrant therefor in favor of the treasurer for the amount so paid. [L. '11, p. 324, § 7.]

See notes to § 7897.

§ 7913. [6704-8.] Refunding.

Any paying off, or refunding of the present outstanding warrant indebtedness against the capitol building fund shall not be deemed an indebtedness incurred by the state capitol commission and the said capitol commission in addition to the expenditures hereinbefore authorized may at any time expend, for the purposes as outlined in section 7906, any moneys received from the proceeds of the sale or rental of capitol building lands, and all sums of moneys so received are hereby appropriated therefor. [L. '11, p. 324, § 8.]

§ 7914. [6704-9.] Limit of Expenditures.

Any of the amounts herein authorized to be expended or obligations incurred, whether such amounts are specifically named or otherwise are hereby appropriated: Provided, that at no time shall the total expenditures for capitol buildings and grounds, whether authorized under this act or any subsequent enactment, exceed the estimated value of the capitol land grant. [L. '11, p. 327, § 13.]

§ 7915. Amendment of Building Plans.

That the state capitol commission shall have power to amend or modify any of the plans and specifications heretofore authorized or adopted, or to adopt new plans and specifications for the location, construction and completion of buildings on the state capitol site, and may advertise for competitive plans. [L. '17, p. 777, § 5.]

See notes to § 7897.

§ 7916. Tax Levy for Capitol Building Construction Fund—Purchase of Additional Lands.

The state board of equalization is hereby authorized and required at its annual meeting to make a levy of one-half mill for capitol building purposes and the moneys derived therefrom shall be paid into a fund hereby created to be known as "Capitol Building Construction Fund," the moneys from such fund to be used for the purpose of acquiring lands heretofore authorized by law to be acquired for capitol building purposes, together with the lands bounded [by] Twelfth street on the south, Main street on the east, Eleventh street on the north and Water street on the west; if in the judgment of the capitol commissioners, the purchase of such land shall be advisable, erecting buildings at the state capitol, and the completion of buildings now in the course of construction, and the changing and altering of buildings acquired, and the payment of interest on warrants or bonds outstanding against the capitol building fund or issued against the capitol building construction fund. [L. '17, p. 777, § 6.]

See *infra*, § 10763, duties devolve upon state equalization committee.

§ 7917. Repayment of Tax Levies to State Treasury.

All moneys derived from the tax levy herein provided for shall be deemed to be loans from the state, and shall be charged against the land grant for capitol purposes to the state from the general government, and as moneys are derived from the sale, lease or other disposition of said land grant, the advancements hereby provided for shall be repaid to the general fund of the state: Provided, that no moneys received from such sale, lease or disposition shall be returned to the state treasury until all warrants, bonds or other outstanding obligations against the capitol building fund shall have been paid. [L. '17, p. 778, § 8.]

§ 7918. [6704-14.] Stone for Capitol Buildings.

The state capitol commission may, before selecting the stone to be used in surfacing any building in the state capitol group plan, enter into an agreement or agreements with the owner or proprietor of any quarry, that such owner or proprietor will furnish like stone for the buildings to be erected in the future on the state capitol site, at the price and upon the terms stated in such agreement. [L. '15, p. 701, § 5.]

See notes to § 7897.

§ 7919. [6704-15.] Bonds as Security for Deposits of Public Funds.

Bonds authorized by this act shall be acceptable by state, counties, cities, towns, school districts and other municipal corporations of this state as security for the deposit of any of their funds in any banking institution in this state. [L. '15, p. 701, § 6.]

§ 7920. Public Buildings—Authority to Construct.

The state capitol commission is hereby authorized to provide for the erection and completion of public buildings at the capitol for legislative, executive and judicial purposes, and to make contracts therefor, the total cost of any new buildings not to exceed the sum of three million five hundred thousand dollars (\$3,500,000), and to provide for the erection of a suitable memorial upon the capitol grounds in honor of the soldiers, sailors and marines from this state who lost their lives in the service by disease or on the battlefield at home or abroad in the present war with the Teutonic powers, at a cost not exceeding fifty thousand dollars (\$50,000). [L. '19, p. 62, § 1.]

See notes to § 7897.

§ 7921. Appropriation.

There is hereby appropriated from the capitol building construction fund the sum of two million five hundred thousand dollars (\$2,500,000) to be expended during the biennial period ending March 31, 1921, for the purpose of carrying out the provisions of this act. [L. '19, p. 62, § 2.]

CHAPTER X.

RECLAMATION OF ARID LANDS UNDER THE CAREY ACT.

See, also, next chapter.

§ 7922. [6705.] Acceptance of Grant.

The state of Washington does hereby accept the terms of the act of congress approved August 18, 1894, donating to each of the public land states one million acres of arid land. [L. '95, p. 452, § 1.]

The act of 1897, p. 262, § 70, repealed the act of 1895, except this section; but the title of the act of 1897 was held defective in *Howlett v. Cheetham*, 17 Wash. 626. Laws 1903, p. 309, § 24, repealed § 2 of the act of 1895, held to be in force in the case cited. But this chapter supersedes the earlier laws, and Bal. Code, §§ 2086—2108 (Laws 1895 and 1897), are accordingly omitted.

Cited in 17 Wash. 629, 635; 19 Wash. 331.

§ 7923. [6706.] Acceptance of Condition.

The state of Washington hereby accepts the condition of section four (4) of an act of congress, entitled: "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes," approved August 18, A. D. 1894, and all acts subsequent and relating thereto together with all the grants of land to the state under the provisions of the aforesaid acts. [L. '03, p. 299, § 1. Cf. L. '95, p. 452, § 1; Bal. Code, § 2085.]

§ 7924. [6707.] Commissioner of Public Lands to Select and Dispose of.

The selection, management and disposal of said lands shall be vested in the commissioner of public lands of the state of Washington. He shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this chapter, prepare and keep for public inspection, maps or plats, on a scale of two inches to the mile, of all lands selected, receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required to be done in carrying out the provisions of this chapter. [L. '03, p. 299, § 2.]

§ 7925. [6708.] Filing of Request and Proposal.

Any person, company or association of persons, or incorporated company, constructing, having constructed or desiring to construct ditches, canals, or other navigation works, to reclaim land under the provisions of said chapter, shall file with the commissioner of public lands a request for the selection on behalf of the state by the commissioner of public lands of the land to be reclaimed, designating said land by legal subdivision. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the lands to be selected. The proposal shall be prepared in accordance with the rules of the commissioner of public lands and with the regulations of the department of the interior. It shall state the source of water supply, the location and dimensions of the proposed works, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed. In the case of incorporated companies it shall state

the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid-up capital. If the applicant is not an incorporated company the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the commissioner of public lands to determine his or their financial ability to carry out the proposed undertaking. [L. '03, p. 299, § 3.]

§ 7926. [6709.] Certified Check to Accompany.

A certified check for a sum not less than two hundred and fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500) as may be determined by the rules of the commissioner of public lands shall accompany each such request and proposal, the same to be held as a guarantee of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the commissioner of public lands, and to be forfeited to the state in case of the failure of said party to enter into a contract with the state in accordance with the provisions of this chapter. [L. '03, p. 300, § 4.]

§ 7927. [6710.] Examination and Approval of Request and Proposal.

Immediately upon the receipt of any request and proposal as designated in section 7925, it shall be the duty of the commissioner of public lands to examine the same and ascertain if it complies in form with the rules of his office and the regulations of the department of the interior. If it does not it is to be returned for correction, and, if not corrected within sixty days, it may be rejected by the commissioner. The commissioner of public lands shall determine whether or not the proposed works are feasible and the water appropriated and provided for is adequate and whether the maps filed in his office comply with the requirements of his office and the regulations of the department of the interior; also whether the lands proposed to be irrigated are desert in character, and such as may be properly set apart under the provisions of the aforesaid acts of congress and the rules and regulations of the department of the interior thereunder. When a request or proposal as to substance is not approved by the commissioner he shall notify the party making such request or proposal of his disapproval thereof and the reason therefor, and the party so notified shall have sixty days in which to make a satisfactory proposal but the commissioner may, at his discretion, extend the time to six months. [L. '03, p. 300, § 5.]

§ 7928. [6711.] Triplicate Lists Filed.

On receipt of the request and proposal, and the approval of the same by the commissioner of public lands, he shall file in the local United States land office a list in triplicate, describing the land embraced in said proposal with a request for the withdrawal of the land described in said list. [L. '03, p. 301, § 6.]

§ 7929. [6712.] Withdrawal of Lands—Approval of Contract.

Upon the withdrawal of the land by the department of the interior, it shall be the duty of the commissioner of public lands to enter into a

contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal and other irrigation works; the price and terms per acre at which perpetual water rights shall be sold to the settler; the amount of water to be supplied; the price of an annual maintenance fee per acre, and the price and terms upon which the state is to dispose of the lands to settlers: Provided, that such price and terms for irrigation works, water rights, maintenance fee and for lands to be disposed of by the state to settlers, shall in all cases be reasonable and just. This contract shall not be entered into on the part of the state until withdrawal of these lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in penal sum equal to five per cent of the estimated cost of the works, and to be conditioned for the faithful performance of the provisions of the contract with the state: Provided, that no contract under the provisions of this chapter shall be entered into by the commissioner of public lands until the same shall have been approved by the attorney general and the governor. [L. '03, p. 301, § 7.]

§ 7930. [6713.] Limit of Contract Time—Construction.

No contract shall be made by the commissioner of public lands which requires a greater time than ten (10) years for the construction of the works and such additional time as may be granted by the interior department as provided by the aforesaid acts of congress and amendments thereto, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within two years from the date of said contract; and the construction of said works shall be prosecuted with reasonable diligence to completion. [L. '03, p. 302, § 8.]

§ 7931. [6714.] Failure to Begin Construction—Forfeiture.

Upon the failure of any party having a contract with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, it shall be the duty of the commissioner of public lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice such party shall have failed to proceed with the work or to conform to the specifications of his contract with the state the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the state, and it shall be the duty of the commissioner of public lands at once so to declare and to give notice once each week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capitol in like manner and for like period, that upon a day fixed, proposals will be received at the office of the commissioner of public lands at Olympia, Washington, for the purchase of the incompleated works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of par-

tially completed works, under the provisions of this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, to satisfy the bond, and the surplus, if any exists, shall be paid to the original contractor with the state. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount of water to irrigate the lands of water-right owners or there shall exist other cause as provided by law for the appointment of a receiver, the attorney general may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party, and manage, operate, sell or dispose of the same. Such application shall be made to the superior court of the county in which the whole or some portion of the irrigation works or canal of such party is situated; and the court or its receiver by order of the court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the property and works of such party as is provided by law relating to receivers: Provided, that nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law. [L. '03, p. 302, § 9.]

§ 7932. [6715.] State not Liable for Default of Contractor.

Nothing in this chapter shall be construed as authorizing the commissioner of public lands to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. [L. '03, p. 303, § 10.]

§ 7933. [6716.] Notice that Land is Open for Settlement.

Immediately upon the withdrawal of any land for the state by the department of the interior and the inauguration of work by the contractor, it shall be the duty of the commissioner of public lands, by publication once a week in one newspaper of the county or counties in which said land is situated, and such further notice as he may deem necessary, for a period of four weeks, that said land is open for settlement; the price for which said land will be sold to settlers by the state, the contract price at which settlers can purchase a perpetual water right, and the cost of an annual maintenance fee. [L. '03, p. 303, § 11.]

§ 7934. [6717.] Application for Entry.

Any citizen of the United States, or any person having declared his intention to become a citizen of the United States (excepting married women not the heads of families) over the age of twenty-one years, may make application under oath, to the commissioner of public lands, to enter any of said lands in any amount not to exceed one hundred and sixty acres for any one person; such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and the applicant has never received the benefit of the provisions of this act, to an amount greater than one hundred and sixty acres, including the number of acres specified in the

application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association of persons, or incorporated company who have been authorized by the commissioner of public lands to furnish water for the reclamation of said land; and if said applicant has at any previous time entered land under the provisions of this chapter, he shall so state in his application, together with the description, date of entry and location of said lands. The commissioner of public lands shall thereupon file in his office the application and the papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of one dollar per acre, which shall be paid as a partial payment on the land if the application is allowed, and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, or the contractor fails to complete the work according to contract the one dollar per acre accompanying the application shall be returned to the applicant. The commissioner of public lands shall dispose of all lands accepted by the state under the provisions of this act at a uniform price of not less than ten dollars per acre, one-tenth to be paid at the time of entry and the remainder in nine equal annual installments, with interest at six per cent per annum payable annually, provided a settler may make payment in full at any time upon or after making final proof. [L. '03, p. 303, § 12.]

§ 7935. [6718.] Disposition of Funds Received.

All moneys received by the commissioner of public lands from the sale of lands selected under the provisions of this chapter shall be deposited with the state treasurer and shall constitute a trust fund in the hands of said treasurer to be used in the reclamation of other arid lands. [L. '03, p. 304, § 13.]

See *supra*, § 5509, all moneys received from the sale of lands to be deposited in general fund, a later enactment.

§ 7936. [6719.] Settler's Contracts and Undertaking—Payments—Final Proof.

Within one year after any person, company or association of persons or incorporated company authorized to construct irrigation works under the provisions of this chapter, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the state, each settler shall enter into a contract with the state for the purchase of the land described in his certificate of location, complete the first annual payment thereon, and shall cultivate and reclaim not less than one-sixteenth part of the land filed upon by him, and within two years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within ten years from the date of said notice the settler shall appear before the commissioner of public lands or the clerk of the superior court, within the county wherein said land is situated and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he

has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he is an actual settler thereon and has cultivated and irrigated not less than one-eighth of said tract, and such further proof, if any, as may be required by the regulations of the department of the interior, and the commissioner of public lands. The officer taking this proof shall be entitled to receive a fee of two dollars (\$2), which fee shall be paid by the settler and shall be in addition to the price paid for the land. All proofs so received shall be submitted to the commissioner of public lands and shall be accompanied by the last and final payment for said land, and approved by the commissioner of public lands, and such proceedings had that a patent of said land shall be issued: Provided, that when the commissioner of public lands shall take such final proof all fees received by him shall be turned in to the state treasurer. [L. '03, p. 305, § 14.]

§ 7937. [6720.] Patents, Issuance of—Recording.

After the issuance of a patent to any land by the United States to the state, notice thereof shall be forwarded to the party, if any entitled to said land, and, upon full payment having been made, it shall be the duty of the commissioner of public lands to certify such fact to the governor, whereupon he shall cause a patent to be issued to the purchaser, the patent to be signed by the governor and attested by the secretary of state with the seal of the state thereto attached, and shall be recorded in the office of the commissioner of public lands, and no fee shall be required other than the fee provided for in this chapter. [L. '03, p. 305, § 15.]

§ 7938. [6721.] Water Right, an Appurtenance—Lien of—Foreclosure of Lien.

The water right to all land acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. Any person, company or association of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county auditor of the county where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this act and any maintenance fee, the person, company, or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situated, once a week, for four con-

secutive weeks, and shall be sold to the highest bidder at the front door of the courthouse of the county, or such place as may be agreed upon by the terms of the contract. And the sheriff of said county shall in all such cases give notice of sale and shall sell such land and water right and shall make and deliver a certificate of sale to the purchaser, and at such sale no person, company, or association or [of] persons or incorporated company, owning or holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment or payments for said water right and land and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed, or any other party entitled to redeem land sold under execution may redeem land and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party reclaiming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments maturing subsequent to such foreclosure as well as all maintenance fees due at the time of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six (6) weeks after the last preceding redemption. And where the lienholder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine (9) months then at any time within three (3) months after the expiration of such nine (9) months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinbefore provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lienholder at such foreclosure sale the sheriff shall pay out the proceeds of such sale as follows:

First. He shall retain all charges, costs and fees for his services and account for the same as in civil cases.

Second. To the lienholder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon.

Third. The balance of any remaining, to the person against whom such lien was foreclosed or his assigns. When the period of redemption shall have expired the sheriff or his successor in office shall execute a proper conveyance of the land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the superior court of the proper county in the same manner and with like effect as foreclosure of chattel mortgages on notice may be transferred. [L. '03, p. 306, § 16.]

Cited in 93 Wash. 342.

§ 7939. [6722.] Maps of Land Selected—What to Show.

The maps in the office of the commissioner of public lands, of the lands selected under the provisions of this chapter, shall show the location

of the canals or other irrigation works approved in the contract with the commissioner of public lands, and all land filed upon shall be subject to the right of way of such canals, distribution system and irrigation works. Such right of way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance. [L. '03, p. 308, § 17.]

§ 7940. [6723.] Rules for Filing — Annual Report by Irrigation Companies.

The commissioner of public lands shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the forfeiture of entry by settlers, upon failure to comply with the provisions of this chapter. There shall be kept in the office of the commissioner of public lands for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of irrigation works under the provisions of this chapter, an annual report, to be submitted to him on or before November 1st of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the commissioner of public lands may see fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by any person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves. [L. '03, p. 308, § 18.]

§ 7941. [6724.] Fees of Commissioner of Public Lands.

The commissioner of public lands shall collect the following fees: For filing each application one (1) dollar; for filing each final proof one (1) dollar; for issuing each patent two (2) dollars; for making certified copies of papers or records, the same fee as is provided for to be charged by the secretary of state for like services. All moneys collected and fees received under this chapter shall be paid by the commissioner of public lands to the state treasurer and credited by him to the trust fund created by said act of congress. [L. '03, p. 308, § 19.]

See *supra*, § 7821, fees of commissioner, a later enactment.

§ 7942. [6725.] Commissioner's Annual Report.

The commissioner of public lands shall issue on or before November 30th of each year a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivision of land intended to be reclaimed, and the terms of payment for both water rights and land. Not less than one thousand copies of such report shall be printed for gratuitous distribution. [L. '03, p. 309, § 20.]

§ 7943. [6726.] State, School and Granted Lands — Water Rights Extended to, in Contracts for Reclamation.

Any contract for the reclamation of arid land under this chapter shall provide that a water right be extended to all state, school and granted lands owned by the state of Washington, under the canal and irrigation works to be constructed under such contract at the same rates and upon the same terms and conditions as apply to the lands granted under said act of congress. [L. '03, p. 309, § 21.]

• § 7944. [6727.] Reimbursement of State.

The state of Washington shall, out of the money arising from its disposal of any lands selected under this chapter, first reimburse itself for any and all costs and expenditures incurred, and heretofore incurred, by it in selecting, irrigating and reclaiming said land. [L. '03, p. 309, § 22.]

§ 7945. [6728.] Actions by Commissioner in Name of State.

All suits or actions brought by the commissioner of public lands, under the provisions of this chapter, shall be instituted by him in the name of the state of Washington. [L. '03, p. 309, § 23.]

CHAPTER XI.**RECLAMATION OF GRANTED LANDS, IN GENERAL.**

Under the Carey Act: See last preceding chapter.

§ 7946. [6729.] Proposals and Contracts for Irrigation.

The commissioner of public lands of the state of Washington be and is hereby authorized and empowered to receive and file proposals, and to enter into contract as herein provided, for the construction of irrigation works to reclaim any and all of the lands granted to the state of Washington for any and all purposes and uses. [L. '05, p. 113, § 1.]

§ 7947. [6730.] Proposals Filed With Commissioner—Contents.

Any person, company or association of persons or incorporated company doing business in the state of Washington desiring to construct ditches, canals or other irrigation works for the reclamation of said lands, shall file with the commissioner of public lands, proposal to construct the ditches, canals or other irrigation works necessary to the complete reclamation of said lands. The proposal shall be prepared in accordance with the rules adopted by the commissioner of public lands. It shall state the source of water supply, the location and dimension of the proposed works, the location and character of the land proposed to be irrigated, the price per acre at which perpetual water right will be sold to settlers on the land to be irrigated, and shall be accompanied by maps, plans and specifications of the proposed works and land to be irrigated, which shall be considered a part of the proposal. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid-up capital. If the applicant is not an incorporated company, the proposal shall set forth the name or

names of the party or parties and such other facts as will enable the commissioner of public lands to determine his or their financial ability to carry out the proposed undertaking. [L. '05, p. 113, § 2.]

§ 7948. [6731.] Certified Check to Accompany Proposal.

A certified check for a sum not less than two hundred and fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500), as may be determined by the commissioner of public lands, shall accompany each such proposal, the same to be held as guarantee of the execution of the contract with the state, in accordance with its terms by the party submitting such proposal. In case of the approval of the same and the acceptance of the proposal by the commissioner of public lands, and to be forfeited to the state in case of the failure of said party to enter into a contract with the state in accordance with the provisions of this chapter. [L. '05, p. 114, § 3.]

§ 7949. [6732.] Examination of Proposal by Commissioner.

Immediately upon the receipt of any proposal as designated in section 7947, it shall be the duty of the commissioner of public lands to examine the same and ascertain if it complies in form with the rules adopted by him as provided in section 7947. If it does not it is to be returned for correction; and if not corrected within sixty days, it may be rejected by the commissioner of public lands. The commissioner of public lands shall determine whether or not the proposed works are feasible and the water provided is adequate, and whether the proposed irrigation works described in the maps, plans and specifications, are adequate for the irrigation of the lands intended to be irrigated. When a request or proposal is not approved by the commissioner of public lands, he shall notify the party making such request or proposal of his disapproval thereof, and the party so notified shall have sixty days in which to make a satisfactory proposal, but the commissioner of public lands may, at his discretion, extend the time six months. [L. '05, p. 114, § 4.]

§ 7950. [6733.] Approval of Plans—Contract.

If the plans and specifications for the proposed irrigation works and the furnishing of a perpetual water supply for the irrigation of said lands is approved by the commissioner of public lands, the said commissioner of public lands is authorized and empowered to enter into a contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal or other irrigation work; the price per acre at which perpetual water rights shall be sold to the settler or owner, which price may be paid in a lump sum or in ten annual payments, as the settler or owner may elect; the amount of water to be supplied and the price of the annual maintenance fee per acre: Provided, that no contract under the provisions of this chapter shall be entered into by the commissioner of public lands until the same shall have been approved by the attorney general and the governor. [L. '05, p. 114, § 5.]

§ 7951. [6734.] Construction—Time of Completion—Bond of Contractor.

No contract shall be made by the commissioner of public lands which requires greater time than three years for the construction of the works and such additional time as may be granted by the commissioner of public lands not to exceed two years, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within twelve months from the date of said contract, and the construction of said works shall be prosecuted with reasonable diligence to completion. The commissioner of public lands shall, before letting any contract for the construction of any works herein provided for, require the contractor to enter into a bond to the state of Washington in the penal sum of not less than twenty per cent of the estimated cost of the works, conditioned for the faithful performance of the terms and conditions of said contract. [L. '05, p. 115, § 6.]

§ 7952. [6735.] Contractor in Default—Forfeiture—Completion—Sale—Receiver.

Upon the failure of any party having a contract with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, it shall be the duty of the commissioner of public lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice, such party shall have failed to proceed with the work or to conform with the specifications of his contract with the state the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the state, and it shall be the duty of the commissioner of public lands at once so to declare and to give notice once each week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, that upon a day fixed, proposals will be received at the office of the commissioner of public lands for the purchase of the incompleted works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of partially completed works, under the provisions of this section, shall first be applied to the expenses incurred by the state in their forfeiture and disposal and to satisfy the bond, and the surplus, if any exists, shall be paid to the original contractor with the state. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount of water to irrigate the lands of water right owners or there shall exist other cause as provided by law for the appointment of a receiver, the attorney general may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party and manage, operate, sell or dispose of same. Such application shall be made to the superior court of the county in which the whole or some portion of the irrigation works or canal of such party is situated; and the court or its receiver by order of the court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the

property and works of such party as is provided by the law relating to receivers: Provided, that nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law. [L. '05, p. 115, § 7.]

§ 7953. [6736.] State not Liable for Default of Contractor.

Nothing in this chapter shall be construed as authorizing the commissioner of public lands to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. [L. '05, p. 116, § 8.]

§ 7954. [6737.] Sworn Statement of Applicant—Perpetual Water Rights upon Sale.

Whenever application has been made to the commissioner of public lands for the purchase of any of the irrigable lands described in this chapter as provided by law, the said application shall be accompanied by the sworn statement of the applicant that he is ready and willing to enter into contract with the person, company, or association of persons, or incorporated company, who have been authorized by the commissioner of public lands to furnish water for the reclamation of said lands, which statement shall be filed with said application, and the commissioner of public lands may thereupon proceed to the appraisal, advertisement and sale of said lands as provided by law. In case of the sale of any lands to any party pursuant to the appraisal and advertisement thereof, the commissioner of public lands shall not issue a contract therefor until there shall have been filed in his office a certified copy of a contract for a perpetual water right for said lands made and entered into by the party purchasing the same with the person, company or association of persons, or incorporated company, who have been authorized by the commissioner of public lands to furnish water for the reclamation of said lands. [L. '05, p. 116, § 9.]

§ 7955. [6738.] Water Right, an Appurtenance—Lien of—Foreclosure of Lien.

The water right to all land acquired under the provisions of this chapter shall attach to and become appurtenant to the land. Any person, company or association of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county auditor of the county where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this

chapter or maintenance fee, the person, company or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler or owner the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right are situated, once a week for four consecutive weeks, and shall be sold to the highest bidder at the front door of the courthouse of the county, or such place as may be agreed upon by the terms of the contract. And the sheriff of said county shall in all such cases give notice of sale and shall sell such land and water right and shall make and deliver a certificate of sale to the purchaser, and at such sale no person, company or association of persons or incorporated company, owning or holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment or payments for said water right and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner, against whom the lien has been foreclosed, or any party entitled to redeem the land sold under execution may redeem the land and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party redeeming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments made subsequent to such foreclosure as well as all maintenance fees at the time of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six (6) weeks after the last preceding redemption. And where the lienholder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine (9) months then at any time within three (3) months after the expiration of such nine (9) months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinafter provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lienholder at such foreclosure sale the sheriff shall pay out the proceeds of such sale as follows:

First: He shall retain all charges, costs and fees for his services and account for the same as in civil cases. Second: To lienholder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon. Third: The balance, if any remaining, to the person against whom such lien was foreclosed or his assigns.

When the period of redemption shall have expired the sheriff or his successors in office shall execute a proper conveyance of the land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the superior court of the proper

county in the same manner and with like effect as foreclosures of chattel mortgages on notice may be transferred. [L. '05, p. 117, § 10.]

§ 7956. [6739.] Maps, What to Show—Right of Way Over State Lands.

The maps in the office of the commissioner of public lands of the lands proposed to be irrigated under the provisions of this chapter, shall show the location of the canals or other irrigation works approved in the contract with the commissioner of public lands, and all lands described therein belonging to the state of Washington shall be subject to the right of way of such canals, distribution system and irrigation works, such right of way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance. [L. '05, p. 119, § 11.]

See, also, *infra*, § 8099, right of way.

§ 7957. [6740.] Duties of Commissioner—Annual Report by Irrigation Companies.

The commissioner of public lands shall provide suitable rules for the filing of proposals for the construction of irrigation works. There shall be kept in the office of the commissioner of public lands, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the purchase of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of irrigation works under the provisions of this chapter, an annual report, to be submitted to him on or before November 1st, of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the commissioner of public lands may see fit to require. [L. '05, p. 119, § 12.]

§ 7958. [6741.] Biennial Report of Land Commissioner.

The commissioner of public lands shall include in his biennial report to the governor a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivisions of land intended to be reclaimed and the terms of payment for water right sold. [L. '05, p. 119, § 13.]

§ 7959. [6742.] Actions by Commissioner in Name of State.

All suits or actions brought by the commissioner of public lands under the provisions of this chapter, shall be instituted by him in the name of the state of Washington. [L. '05, p. 119, § 14.]

§ 7960. [6743.] Not to Affect Preceding Chapter.

Nothing in this chapter shall be construed as a repeal, amendment or modification in any respect of chapter X of this title. [L. '05, p. 119, § 15.]

CHAPTER XII.

TIDE AND SHORE LANDS.

See *infra*, §§ 9593—9600, waterways across tide lands.

See *infra*, §§ 9603—9612, filling in and excavating tide lands.

§ 7961. [6744.] Classification of Tide Lands.

The tide and shore lands of the state of Washington, which are not reserved for sale by the Constitution and laws of the state, shall be divided into two classes:—

1. Tide and shore lands of the first class, which shall comprise all tide and shore lands within or in front of the limits of any incorporated city or town, or within two miles thereof on either side, including submerged lands lying between the line of mean low tide and the inner harbor line, wherever harbor lines have been established or shall be established;

2. All tide and shore lands in the state not included in the above class shall be known as second class tide and shore lands, and shall be leased and sold as in the manner provided in this chapter. [Cf. L. '95, p. 549, § 52; L. '97, p. 248, § 39.]

Cited in 16 Wash. 637; 24 Wash. 364;
34 Wash. 252; 57 Wash. 537; 76 Wash.
162, 164, 165; 93 Wash. 137.

**Title and Right to Tide and Shore
Lands in General:** See Remington's
Digest, Pub. Lands, § 84 and cases cited.

§ 7962. [6744-1.] Location of Line Dividing Tide and Shore Lands.

The board of state land commissioners is hereby authorized to locate in all navigable rivers in this state, which are subject to tidal flow, the line dividing the tidelands in such river from the shore lands in such river, and such classification or the location of such dividing line shall be final and not subject to review. [L. '15, p. 419, § 16.]

§ 7963. [6745.] Survey, etc., of Tide Lands of First Class.

It shall be the duty of the harbor line commission provided for in this act to survey, plat, examine and appraise any tide or shore lands of the first class not heretofore platted and appraised and said commission may establish harbor lines in front of incorporated cities and towns where such harbor lines have not been heretofore established under the provisions of Article XV of the Constitution of this state; and whenever all of the owners and other persons having a vested interest in the lands embraced within any such plat or within any portion of such plat embracing all the land in such plat, bounded by waterways heretofore established and the upland and deep water, shall petition the state land commission by filing a petition therefor with the commissioner of public lands, the state land commission is authorized and empowered to replat the lands described in said petition and all unsold land within such replat shall be reappraised in the manner provided for original appraisements of tide lands. All streets, alleys, waterways and other public places embraced within any such plat or portion of plat vacated by the replat hereby authorized shall vest in the owner or owners abutting thereon. If in the preparation of such replat by the state land commission it becomes desirable to appropriate any tide land which has heretofore been sold for use as streets, alleys, waterways or other public places, all persons

interested in the title shall join in the dedication of such replat before the same shall be effected. No waterways laid out prior to January 1, 1900, shall be vacated. All plats and replats provided for in this section shall be in triplicate. Within thirty days after the adoption of such replat by the commission one copy shall be filed in the office of the commissioner of public lands; one copy in the office of the auditor of the county wherein such land is situated and one copy in the office of the city engineer of the city or town wherein such land is situated. Any replat of lands heretofore platted shall be in full force and effect and shall constitute the vacation of streets, alleys and waterways and public places heretofore dedicated and shall constitute a dedication of new streets, alleys or public places and waterways appearing upon such replat when a majority of the city council of the city or town wherein such replatted land is situated shall by resolution approve the same; and if such land is not in any incorporated city or town when a majority of the county commissioners of the county wherein such replatted land is situated shall approve the same. Nothing herein contained shall be construed to supersede existing laws relating to the vacation of streets, alleys and public places. This section is intended to afford an additional method of procedure: Provided, if any streets heretofore platted are vacated by the replat and any new street or waterway is so laid out as to leave unsold tide land between such new street or waterway and land heretofore sold, the owner of said tide land heretofore sold shall have the preference right, for sixty days after final approval of such replat, to buy the unsold tide land so intervening at the appraised value. [L. '01, p. 326, § 1. Cf. L. '95, p. 550, § 53; L. '97, p. 248, § 40.]

See supra, § 7797, the state board of land commissioners constitutes the "harbor line commission."

Cited in 13 Wash. 167; 14 Wash. 424, 425; 17 Wash. 660.

§ 7964. [6746.] How Surveyed and Platted—Streets—Appraisements.

In surveying tide or shore lands of the first class the said harbor line commission shall have power to act, and it shall be their duty to lay out streets and alleys which shall thereby be dedicated to the public use, subject to the control of cities, with due regard to the convenience of commerce and navigation: Provided, that all alleys, streets, avenues, boulevards and other public thoroughfares heretofore located and platted on the tide or shore lands of the first class by boards of tide lands appraisers or the board of state land commissioners are hereby validated as public highways and dedicated to the use of the public for the purposes for which they were intended, and no improver, upland owner or other person shall have the right to buy the whole or any part of any such alley, street, avenue, boulevard or other thoroughfare. And in appraising said lands said commission shall appraise each lot, tract or piece of land separately, and shall enter in a well-bound book a description of the lot, tract or piece of land, its full appraised value, the area and the rate per acre at which it is appraised; and if said lot is covered in whole or in part by improvements in actual use for commerce, trade or business, on or prior to March 26, 1890, the said commission shall designate the owner of said improvements, of what they consist, the area of land covered by them, the portion of

each lot, tract or piece of land and the appraised value of the land covered thereby with and exclusive of the improvements. [L. '95, p. 550, § 54; L. '97, p. 248, § 41.]

See *infra*, §§ 8966, 9034, first and second class cities may extend streets over.

See *infra*, §§ 9292, 9295, streets over are public highways.

Cited in 14 Wash. 424, 425; 17 Wash. 660; 38 Wash. 362; 42 Wash. 421; 84 Wash. 381.

Extension of Streets Over Tide Lands:
See Remington's Digest, Pub. Lands, § 88; State ex rel. Stimson Mill Co. v. Board of Harbor Line Commrs., 4 Wash. 6, 29 Pac. 938; Wilson v. Board of State Land Commrs., 13 Wash. 65, 42 Pac. 524;

Seattle v. Forrest, 14 Wash. 423, 44 Pac. 883; Ilwaco v. Ilwaco R. & Nav. Co., 17 Wash. 652, 50 Pac. 572; West Seattle v. West Seattle Land etc. Co., 38 Wash. 359, 80 Pac. 549; Henry v. Seattle, 42 Wash. 420, 85 Pac. 24; Chlopeck Fish Co. v. Seattle, 64 Wash. 315, 117 Pac. 232; Puget Mill Co. v. State, 93 Wash. 128, 160 Pac. 310.

§ 7965. [6747.] Plats of Shore and Tide Lands.

Said commission shall prepare plats showing all shore and tide lands surveyed and appraised by them in the respective counties, on which shall be marked the location of all such lands, extending the lines of United States survey over the same, and shall prepare and keep in a well-bound book a record of their proceedings, including a list of said shore and tide lands and their appraisal of the same, which plat and book shall be in duplicate. [L. '95, p. 551, § 55; L. '97, p. 249, § 42.]

§ 7966. [6748.] Plats, When Filed.

When the said commission shall have discharged their duties as aforesaid they shall deposit one copy of the plat and record as aforesaid with the county auditor in the respective counties, who shall file and safely keep the same in his office, and they shall deliver one copy of the plat and record to the commissioner of public lands. [L. '95, p. 551, § 56; L. '97, p. 249, § 43.]

§ 7967. [6749.] Notice of Filing—Appeal from Appraisement.

The harbor line commission shall, before delivering said plat and record to the commissioner of public lands, cause a notice to be inserted for a period of four consecutive weeks in a newspaper of general circulation in the county wherein the lands are situate that said plat and record describing it is complete and subject to inspection at the office of the commission and will be filed on a certain day to be named in said notice. Any person claiming a preference right of purchase of any of said lands, and who feels aggrieved at the appraisement fixed by the commission upon said lands or any part thereof, may within sixty days after the filing of such plats and records by said commission (which shall be done on the day fixed in said notice) appeal from said appraisement to the superior court of the county in which said tide lands are situated. Said appeal shall be taken in the manner prescribed in section 1910, providing for appeals from justice courts. The prosecuting attorney of any county or city attorney wherein such lands are situated shall, at the request of the governor or of ten freeholders of the county wherein such lands are situated, appeal on behalf of the state from any appraisement as hereinbefore provided, which appeal shall be taken in the manner provided above. Notice

of such appeal shall be served on the harbor line commission, whose duty it shall be to immediately notify all interested. The party other than the state or city appealing shall execute a bond to the opposite party with sufficient surety, to be approved by the state land commissioner in the sum of two hundred dollars conditioned for the payment of the costs of appeal. [L. '95, p. 551, § 57; L. '97, p. 249, § 44.]

See supra, §§ 7808—7814, appeals generally, a later enactment, which may supersede this section.

Cited in 13 Wash. 168; 17 Wash. 655.

Under this section the "corporation counsel" of Seattle, as the principal law officer of the city, is entitled to prosecute

an appeal from the appraisal of tide lands required to be taken by the "city attorney": *Scott v. Forrest*, 13 Wash. 166, 42 Pac. 519.

§ 7968. [6750.] Rights of Abutting Owners, First Class Tide Lands.

The owner or owners of lands abutting or fronting upon the tide or shore lands of the first class shall have the right for sixty days following the filing of the final appraisal of the tide and shore lands with the commissioner of public lands to apply for the purchase of all or any part of the tide or shore lands in front of the land so owned: Provided, that if valuable improvements, and in actual use prior to March 26, 1890, for commerce, trade, residence or business have been made upon said tide or shore lands by any person, association, or corporation, the owner or owners of such improvements shall have the exclusive right to apply for the purchase of the land so improved for the period aforesaid. If at the expiration of sixty days from and after the filing of final appraisal with the commissioner of public lands there being no conflicting applications filed the applicant shall be deemed to have the right to purchase. If at the expiration of said sixty days two or more applications shall have been filed for any tract, conflicting with each other, the board of state land commissioners shall forthwith require each applicant, within a time stated, to submit under oath a full statement of the facts whereby he claims a preference right of purchase. In case any applicant shall fail within the time limited to file such statement he shall, unless good excuse be shown therefor, be deemed to have waived his claim to a right of purchase of the tract under his application. After such statements have been filed, if it be deemed advisable or necessary by the board of state land commissioners, in order to determine the rights of the parties applying for said tract, said board may order a hearing for such purpose. The board shall determine who has the first right of purchase to the whole or any portion of the lot or tract involved, and shall, unless an appeal be taken from the appraisal or finding to the superior court, proceed to sell or dispose of such lands in accordance with such finding. [L. '15, p. 414, § 8. Cf. L. '95, p. 552, § 58, and p. 553, § 61; L. '97, p. 250, § 45.]

See infra, § 7974, abutter's rights second class land.

See infra, § 7980, and notes.

See infra, § 7997, rights of abutter after plat of harbor areas.

Cited in 17 Wash. 655; 19 Wash. 302; 21 Wash. 493; 49 Wash. 336; 60 Wash. 503; 65 Wash. 216, 219, 221; 76 Wash. 164; 84 Wash. 109—112.

Lands Subject to Sale or Lease in General: See *Remington's Digest*, Pub. Land, §§ 89, 90; *State ex rel. Megler v. Forrest*, 13 Wash. 268, 43 Pac. 51; *State ex rel.*

Smith v. Forrest, 8 Wash. 610, 36 Pac. 686, 1120; Oliver v. Dupee, 16 Wash. 634, 48 Pac. 351; Hays v. Hill, 23 Wash. 730, 63 Pac. 576; Pearl Oyster Co. v. Heuston, 57 Wash. 533, 107 Pac. 349, 832, 135 Am. St. Rep. 1007; State v. Sturtevant, 76 Wash. 158, 135 Pac. 1035, 138 Pac. 650; State ex rel. McKenzie v. Forrest, 11 Wash. 227, 39 Pac. 684.

Preference Right to Purchase Tide Lands: See Remington's Digest, Pub. Lands, §§ 94—100.

§ 94. Preferential Right to Purchase or Lease in General: State ex rel. Kinnear v. Bridges, 21 Wash. 591, 59 Pac. 487; Gifford v. Horton, 54 Wash. 595, 103 Pac. 988.

§ 95. — Time of Exercising: McKenzie v. Woodin, 9 Wash. 414, 37 Pac. 663; Kinnear v. Ross, 74 Wash. 391, 133 Pac. 607.

§ 96. — Of Abutting Owner: West Coast Imp. Co. v. Winsor, 8 Wash. 490, 36 Pac. 441; Denny v. Northern Pac. R. Co., 19 Wash. 298, 53 Pac. 341; Seattle & M. R. Co. v. Carraher, 21 Wash. 491, 58 Pac. 570; Hays v. Merchants' Nat. Bank, 14 Wash. 192, 44 Pac. 137; Seattle & Lake etc. Co. v. Seattle Dock Co., 35 Wash. 503, 77 Pac. 845; Kenyon v. Knipe, 2 Wash. 394, 27 Pac. 227, 13 L. R. A. 142; State ex rel. Bartlett v. Forrest, 12 Wash. 483, 41 Pac. 194; Gifford v. Horton, 54 Wash. 595, 103 Pac. 988; Williams v. Cole, 54 Wash. 110, 102 Pac. 870; Shorett v. Signor, 58 Wash. 89, 107 Pac. 1033; Pacific Iron Works v. Bryant Lumber & Shingle Mill Co., 60 Wash. 502, 111 Pac. 578; Book v. Thomas, 61 Wash. 607, 112 Pac. 917; Bleakley v. Lake Washington Mill Co., 65 Wash. 215, 118 Pac. 5.

§ 97. — Of Lessee: State ex rel. Bussell v. Bridges, 23 Wash. 82, 62 Pac. 449.

§ 98. — Of Improver: Eisenbach v. Hatfield, 2 Wash. 236, 26 Pac. 539, 12 L. R. A. 632; West Coast Imp. Co. v. Winsor, 8 Wash. 490, 36 Pac. 441; Morse v. O'Connell, 7 Wash. 117, 34 Pac. 426; Globe Mill Co. v. Bellingham Bay Imp. Co., 10 Wash. 458, 38 Pac. 1112; State ex rel. Bartlett v. Forrest, 12 Wash. 483, 41 Pac. 194; Tullis v. Tacoma Land Co., 19 Wash. 140, 52 Pac. 1017.

§ 99. — Character of Improvements: McKenzie v. Woodin, 9 Wash. 414, 37 Pac. 663; Globe Mill Co. v. Bellingham Bay Imp. Co., 10 Wash. 458, 38 Pac. 1112; Barlow v. Gamwell, 12 Wash. 651, 42 Pac. 115; Lake Whatcom Logging Co. v. Callvert, 33 Wash. 126, 73 Pac. 1128; Pacific Iron Works v. Bryant Lumber & Shingle Mill Co., 60 Wash. 502, 111 Pac. 578.

§ 100. — Change in Law and Vested Rights: State ex rel. Megler v. Forrest, 13 Wash. 268, 43 Pac. 51; Allen v. Forrest, 8 Wash. 700, 36 Pac. 971, 24 L. R. A. 606; State ex rel. Bartlett v. Forrest, 12 Wash. 483, 41 Pac. 194; State ex rel. Board of State Land Commissioners v. McGilvra, 84 Wash. 487, 147 Pac. 40.

PROCEDURE TO OBTAIN SALES—Application for Purchase: See Remington's Digest, Pub. Lands, § 102; State ex rel. Megler v. Forrest, 13 Wash. 268, 43 Pac. 51; Johnson v. Woodworth, 18 Wash. 243, 51 Pac. 375.

Appraisal: See Remington's Digest, Pub. Lands, §§ 103, 104; State ex rel. Hewitt v. Sharpstein, 4 Wash. 68, 29 Pac. 848; Semon v. Callvert, 27 Wash. 679, 68 Pac. 350; Sullivan v. Callvert, 27 Wash. 600, 68 Pac. 363; Lake Whatcom Log. Co. v. Callvert, 33 Wash. 126, 73 Pac. 1128; State ex rel. Shores v. Ross, 47 Wash. 210, 91 Pac. 762.

Contest and Determination of Right to Purchase: See Remington's Digest, Pub. Lands, §§ 106, 107; State ex rel. Smith v. Forrest, 8 Wash. 610, 36 Pac. 686, 1120; Hays v. Merchant's Bank of Port Townsend, 10 Wash. 573, 39 Pac. 98; Denny v. Northern Pac. R. Co., 19 Wash. 298, 53 Pac. 341; Book v. West, 84 Wash. 107, 146 Pac. 167; Kinnear v. Ross, 74 Wash. 391, 133 Pac. 607.

Order for Sale—Discretion of Officers: See Remington's Digest, Pub. Lands, § 108; State ex rel. Bussell v. Bridges, 30 Wash. 268, 70 Pac. 506; Polson v. Callvert, 38 Wash. 614, 80 Pac. 815; State ex rel. Pelton v. Ross, 39 Wash. 399, 81 Pac. 865; State ex rel. Shores v. Ross, 44 Wash. 246, 87 Pac. 262; State ex rel. Stirrat v. Ross, 54 Wash. 481, 103 Pac. 824.

Contract for Purchase in General: See Remington's Digest, Pub. Lands, § 109; State ex rel. Bellingham Bay Imp. Co. v. Bridges, 19 Wash. 431, 53 Pac. 545; Shelton Logging Co. v. Gosser, 26 Wash. 126, 66 Pac. 151; Henry v. Seattle, 42 Wash. 420, 85 Pac. 24.

Leases: See Remington's Digest, Pub. Lands, § 110; State ex rel. Bussell v. Callvert, 33 Wash. 380, 74 Pac. 573; State v. Scott, 89 Wash. 63, 154 Pac. 165; Puget Mill Co. v. State, 93 Wash. 128, 160 Pac. 310.

Deeds: See Remington's Digest, Pub. Lands, § 110—1; Pearl Oyster Co. v. Heuston, 57 Wash. 533, 107 Pac. 349, 832, 135 Am. St. Rep. 1007; State v. Sturtevant, 76 Wash. 158, 135 Pac. 1035, 138 Pac. 650.

Under section 7833, defining tide lands as all lands over which the tide ebbs and flows from the line of ordinary high tide

to the line of mean low tide, excepting oyster lands, a state deed of tide lands conveys title only to the line of mean low tide; as the deed is limited by the express terms of the statutes: *State v. Scott*, 89 Wash. 63, 154 Pac. 165.

— **Collateral Attack:** See *Remington's Digest*, Pub. Lands, § 111; *Welsh v. Callvert*, 34 Wash. 250, 75 Pac. 871; *Price v. Loe*, 56 Wash. 253, 105 Pac. 469.

Payments: See *Remington's Digest*, Pub. Lands, § 112; *Semon v. Callvert*, 27 Wash. 679, 68 Pac. 350.

Cancellation of Contract, or Deed Lease—**In General:** See *Remington's Digest*, Pub. Lands, § 113; *Henry v. Seattle*, 42 Wash. 420, 85 Pac. 24; *State ex rel. Bussell v. Callvert*, 33 Wash. 380, 74 Pac. 573; *Frazier v. Wilson*, 35 Wash. 625, 77 Pac. 1064; *State ex rel. Shores v. Ross*, 47 Wash. 210, 91 Pac. 762; *State ex rel. Abbott v. Ross*, 62 Wash. 82, 113 Pac. 273; *Pearl Oyster Co. v. Houston*, 57 Wash. 533, 107 Pac. 349, 832, 135 Am. St. Rep. 1007; *State ex rel. Horan v. Savidge*, 79 Wash. 479, 140 Pac. 559.

Actions for Cancellation: See *Remington's Digest*, Pub. Lands, § 116; *State v. Washington Dredging etc. Co.*, 43 Wash. 508, 86 Pac. 936; *Powers v. Webster*, 47 Wash. 99, 91 Pac. 569; *State v. Ort*, 66 Wash. 130, 119 Pac. 21.

Disposition of Proceeds of Sale: See *Remington's Digest*, Pub. Lands, § 117;

Tacoma Land Co. v. Young, 18 Wash. 495, 52 Pac. 244.

Rights and Remedies of Occupants or Purchasers: See *Remington's Digest*, Pub. Lands, §§ 118—121.

In General—*Pierce v. Kennedy*, 2 Wash. 324, 26 Pac. 554, 28 Pac. 35; *Sequim Bay Canning Co. v. Bugge*, 49 Wash. 127, 94 Pac. 922, 16 Ann. Cas. 196.

§ 119. — **Injunction:** *Eisenbach v. Hatfield*, 2 Wash. 236, 26 Pac. 539, 12 L. R. A. 632; *Morse v. O'Connell*, 7 Wash. 117, 34 Pac. 426; *West Coast Imp. Co. v. Winsor*, 8 Wash. 490, 36 Pac. 441; *Seattle Wharf Co. v. Callvert*, 42 Wash. 390, 85 Pac. 16.

§ 120. — **Damages for Delay in Issuing Contract:** *Billings v. State*, 27 Wash. 288, 68 Pac. 583.

§ 121. — **Compelling Issuance of Contract or Acknowledgment of Right:** *State ex rel. Smith v. Forrest*, 11 Wash. 158, 39 Pac. 450; *State ex rel. Bussell v. Callvert*, 33 Wash. 380, 74 Pac. 573.

Power of state to grant title to land under navigable waters. *Ann. Cas.* 1918B, 1107; 53 *Am. St. Rep.* 289; 22 *L. R. A. (N. S.)* 337.

Right of owner of upland to make a use, not connected with navigation, of the shore between high and low water mark, which excludes the general public. 10 *A. L. R.* 1053.

§ 7969. [6751.] Limitation of Appeal—Dismissal.

In all cases involving the prior privilege of purchase of tide lands of the first class, wherein appeals have been or shall be taken from any decision of the board of state land commissioners to the superior court, and in which no trial has been or shall be had in said superior court for a period of time exceeding two years after the date of the taking of such appeal, the preference privilege of purchase given to the abutting upland owners and to improvers of such tide lands, shall be and the same is hereby declared to be withdrawn and canceled: Provided, however, that before any such withdrawal or cancellation shall take place or effect as to any tide lands involved in any such appeal now pending a notice of ninety days shall be given to all parties to the appeal by the attorney general on behalf of the state of the intention of the state to enforce such withdrawal and cancellation. [L. '99, p. 120, § 1.]

See notes to § 7967.

Cited in 84 Wash. 490—492, 494, 495.

The statutory withdrawal and cancellation of preference privileges to purchase tide lands, for delay in prosecuting appeal from the board of state land commissioners, declared by this section, and the authority to the attorney general given by the next section, to move the

dismissal of such appeals, cannot be abrogated or suspended by independent litigation touching such shore lands nor by any agreement of the state land commissioner to allow the appeals to rest in statu quo: *State ex rel. Board of State Land Commrs. v. McGilvra*, 84 Wash. 487, 147 Pac. 40.

§ 7970. [6752.] Motion to Dismiss—Notice.

The attorney general of the state is authorized and directed to enter, on behalf of the state, motions of dismissal in all such appeals now pending or hereafter to be prosecuted: Provided, however, that as to appeals hereafter taken thirty days' notice shall be given by the attorney general to the parties to such appeal of the intention of the state to enforce such withdrawal and cancellation. [L. '99, p. 120, § 2.]

Cited in 84 Wash. 490—492, 494.

§ 7971. [6753.] Reappraisement and Sale.

All lands so withdrawn shall be reappraised and sold in the manner prescribed by law for the appraisement and sale of unapplied-for tide lands of the first class. [L. '99, p. 120, § 3.]

Cited in 84 Wash. 490—492, 494.

§ 7972. [6754.] Conveyance of Preference Right.

When the abutting upland owner has attempted to convey by deed to a bona fide purchaser any portion of the tide or shore lands in front of such uplands, or littoral rights therein, such right of purchase herein given to the upland owner shall be construed to belong to such purchaser, or to any person, association or corporation claiming by, through or under such purchaser, to the extent or right so conveyed. [L. '95, p. 552, § 59; L. '97, p. 252, § 46.]

Cited in 21 Wash. 493; 58 Wash. 94, 96; 60 Wash. 503; 65 Wash. 219.

A deed from one member of the community to another has the effect to make the land the separate property of the grantee, and this applies to a preference

right to purchase shore lands through the conveyance of lots below high-water mark, where the community owned the upland, under this section: *Shorett v. Signor*, 58 Wash. 89, 107 Pac. 1033.

§ 7973. [6755.] Unsold First Class Lands, How Disposed of.

Any tide or shore lands of the first class remaining unsold, and where there be no pending application for the purchase of same, shall be sold on the same terms and in the same manner as provided for the sale of school and granted lands: Provided, that none of such lands shall be sold for less than the appraised value heretofore fixed, or that may hereafter be fixed, on said lands; but when it is deemed advisable and for the best interest of the state, such lands may be reappraised in the same manner as provided for the appraisement and sale of school and granted lands. [L. '97, p. 252, § 47.]

Cited in 49 Wash. 133.

§ 7974. [6756.] Preference Right of Abutting Owners, to Second Class Shore Lands.

The owner or owners of any upland bordering upon shore lands of the second class, shall have a preference right for the period of time hereinafter named, to purchase from the state of Washington such shore lands at the appraised value when the same shall have been appraised as hereinafter provided, together with the costs of sale and costs of application by whomsoever made: Provided, however, that the

provisions of this act shall not apply to any shore lands set apart by legislative enactment, for a public road or boulevard, or for any public improvement or use. [L. '01, p. 366, § 1.]

“Act” in this section refers to §§ 7974—7978.

See notes to § 7968.

§ 7975. [6757.] Limitation of Right.

In cases where application to purchase any such land has already been made and is still pending undisposed of, such upland owner's preference right shall be exercised within sixty days from the taking effect of this act; and in all cases wherein application may be hereafter made such upland owner shall have thirty days from the time of making such application, if made by himself, or thirty days from the time of service upon him of notice of such application if made by another. [L. '01, p. 366, § 2.]

“Act” in this section refers to §§ 7974—7978.

§ 7976. [6758.] Sale on Market—Notice to Upland Owners.

The land commission whenever they shall deem it for the best interests of the state, may place any of said shore lands on the market for sale, without application therefor being first made, and in such case such upland owners or owner shall have notice and preference right for a period of thirty days, as above set forth. [L. '01, p. 366, § 3.]

§ 7977. [6759.] Reappraisement—Platting—Sale.

The land commission may have any part or all of the shore lands of the state reappraised, in the event that they shall deem the land to have been heretofore appraised of [at] more or less than its true value. They may also cause any of said shore lands to be platted, as is provided for the platting of shore lands of the first class, and when so platted such lands shall be disposed of as is provided by law for the sale and disposition of shore lands of the first class, except that the notice and preference right of purchase by the upland owner shall remain in force as provided in this act. [L. '01, p. 366, § 4.]

“Act” in this section refers to §§ 7974—7978.

§ 7978. [6760.] Service of Notice on Upland Owner.

Service upon the upland owner, as hereinbefore provided, shall be made by the commissioner of public lands or by some citizen of the state by him appointed, by leaving with said upland owner the required notice, or if the upland owner be a nonresident of said state, by mailing to his last known postoffice address a copy of the required notice. If he be a nonresident and his address unknown to the land commissioner, notice to him shall not be necessary or required. [L. '01, p. 367, § 5.]

§ 7979. [6761.] Second Class, Price of.

All tide and shore lands other than first class shall be offered for sale and sold in the same manner as school and granted lands, and shall be sold at not less than five dollars per lineal chain, measured on the

United States meander line bounding the inner shore limit of such tide or shore lands, and each applicant shall furnish a copy of the United States field-notes, certified to by the surveyor-general of the state of Washington, of said meander line, with his application, and shall pay one-tenth of the purchase price on the date of sale. [L. '97, p. 252, § 48; L. '99, p. 138, § 1.]

See §§ 7974—7978, *supra*, sale of second class lands, a later enactment, giving abutters preference.

Cited in 76 Wash. 165.

§ 7980. [6762.] Separated from Uplands, Price and Survey—Applications.

Tide or shore lands of the second class which are separated from the upland by navigable waters, shall be sold at not less than five dollars per acre; the applicant, at his own expense, shall survey and cause to be filed with his application a plat of the surveys of the land applied for. Such surveys shall be connected with, and the plat shall show, two or more connections with the United States survey of the upland. The applicant shall also file the field-notes of the survey of said land with his application. The commissioner of public lands shall examine and attest the said plat and field-notes of survey, and if found incorrect or indefinite, he shall cause the same to be corrected or may reject the same and cause a new survey to be made. [L. '07, p. 750, § 4. Cf. L. '95, p. 556, §§ 65, 66, 67, 68; L. '97, p. 253, § 49.]

See *supra*, § 7968, and notes.

§ 7981. [6763.] Sold as Other Granted Lands—Appeals.

All tide and shore lands except as herein expressly provided shall be sold upon the terms provided for the sale of school and granted lands, and within twenty days after the expiration of the sixty days limited in which to file applications for the purchase of tide and shore lands the applicant shall pay to the commissioner of public lands one-tenth of the purchase price thereof, and thereupon the purchaser shall enter into a contract with the state as provided for the sale of school, granted and other lands of this act: Provided, that any accretions that may be added to any tract or tracts of tide or shore lands heretofore sold or that may hereafter be sold by the state shall belong to the state, and shall not be sold or offered for sale until the said accretions shall have been first surveyed and platted under the direction of the commissioner of public lands, and the adjacent owner shall have the preference right to purchase said lands for thirty days after the same shall be offered for sale: Provided, further, that where an appeal is taken the purchaser shall in all cases have twenty days from the day on which the final judgment of the superior court is certified to and filed with the commissioner of public lands in which to make said payment and enter into said contract: And provided further, that in case different persons make application to purchase a lot, tract or piece of tide or shore land within sixty days and no appeal is taken from the determination of the commission as to which person has the first right to purchase, then the findings of the commission shall be final and the successful applicant shall have thirty days from the time when served with notice of such finding,

which notice shall be served by mailing a registered letter addressed to the party at his address, which shall be stated in the application to purchase. [L. '99, p. 132, § 1. Cf. L. '95, p. 561, § 81; L. '97, p. 253, § 51.]

Appraisal and sale of granted lands, see chapter VII of this title, §§ 7852—7879.

See supra, § 7874, terms of contract of sale.

Cited in 49 Wash. 133; 64 Wash. 166.

The state has power to dispose of and invest private persons with the ownership of tide lands, subject only to the paramount rights of navigation and the uses of commerce: Sequim Bay Canning Co. v. Bugge, 49 Wash. 127, 94 Pac. 922, 16 Ann. Cas. 196.

§ 7982. [6764.] Leased as Other Granted Lands—Conditions.

Tide and shore lands which have not been sold, and for which applications to purchase have not been theretofore filed and are pending, may be leased in the same manner as provided for the lease of school and granted lands: Provided, that when application is made for the lease of tide or shore lands of the second class, adjacent to upland, the same shall be leased per lineal chain frontage, and the United States field-notes of the meander line shall accompany each application as required for the sale of such lands: And provided further, when such lands are separated from the upland by navigable waters each application shall be accompanied by the plant and field-notes of survey of such land applied for as required when making application for the purchase of such lands: And provided further, that tide lands may be leased for a period not to exceed thirty years. [L. '97, p. 253, § 50; L. '99, p. 139, § 2.]

Leasing of school and granted lands: See chapter VII of this title, § 7880 et seq.

Cited in 33 Wash. 285; 42 Wash. 443; 49 Wash. 133; 110 Wash. 620.

§ 7983. [6765.] Validation of Former Leases.

Any and all leases heretofore issued to any owner or owners under deed or contract of tide or shore land abutting on harbor area of the state of Washington are hereby validated, ratified and affirmed, provided this act shall not affect vested or existing rights. [L. '01, p. 294, § 1.]

Adapted, and relates only to leases of the right to build and maintain wharves, docks and other structures. The first part of this section gave a preference right which has expired by limitation.

§ 7984. [6766.] Appraisal of Improvements.

Should any present or future lessee of tidelands of the state of Washington, or any owner or holder of such leases, fail to exercise the preference right of purchase from the state, of the tidelands covered by any lease within the time prescribed by any existing law, or any law which may hereafter be enacted, then and in that event, the board of state land commissioners shall appraise and determine the value of all improvements then existing upon such property, including the cost of filling and raising said property above high tide, whether filled in or raised above high tide, by such lessee or owner of such lease, or by virtue of any contract made with the state of Washington, and also including the then value to the land of all existing local improvements, paid for by such lessee or owner of such lease. [L. '05, p. 353, § 1.]

See notes to § 7968, rights of improvers.

Cited in 75 Wash. 120.

§ 7985. [6767.] Payment for Improvements by Subsequent Purchaser or Lessee.

Should such tide lands be relet or sold to any person, persons or corporation other than such lessee or owner of such lease, the bid of such subsequent lessee or purchaser shall not be accepted until the payment by such subsequent lessee or purchaser to the owner of such former lease, the appraised and fixed value of such improvements aforesaid, as determined by said board of state land commissioners, or as may be determined upon appeal, and said board is authorized to compel by subpoena the attendance, swear and examine witnesses to such values. [L. '05, p. 354, § 2.]

Cited in 75 Wash. 120.

§ 7986. [6768.] Appeal from Appraisement.

Should the owner and holder of such lease be dissatisfied with the appraised value of such improvements as fixed or determined by said board of state land commissioners, he or it may appeal to the superior court of the county wherein said property is located, within the time and according to the mode prescribed by law relating to appeals, from the board of state land commissioners to the superior court. [L. '05, p. 354, § 3.]

§ 7987. [6768-1.] Relief of Purchasers of Tide Lands on Columbia River.

All persons, firms or corporations to whom the state of Washington has sold, contracted to sell or deeded tide lands along the Columbia River, which said tide lands are located within the state of Oregon and for which contracts or deeds have been issued therefor without right or authority and which convey no right, title or interest in and to said tide lands, because such tide lands were situated within the state of Oregon, and all persons, firms or corporations claiming an interest in said tide lands under and by virtue of any such sale, contract or deed of the state of Washington shall, upon the terms and conditions and in the manner hereinafter provided, be entitled to such relief as is provided for in the following section of this act. [L. '15, p. 401, § 1.]

§ 7988. [6768-2.] Application for Repayment.

Any such person, firm or corporation holding a contract of sale or deed from the state of Washington for any tide lands located within the state of Oregon, or the assigns or the successors in interest of any such person, firm or corporation claiming or asserting any right by, through or under any such contract or deed, may file with the commissioner of public lands an application for the repayment to such person, firm or corporation of all the moneys paid to the state of Washington pursuant to the provisions of any such sale, contract or deed. Such application shall set forth the name of the person, firm or corporation demanding the relief herein provided for, an itemized statement of the moneys paid to the state of Washington under and by virtue of any such sale, contract or deed, a description of the tide lands sold or described in any such contract or deed, the date thereof and such other and further information as the commissioner of public lands may require. The ap-

plicant shall attach to such application a complete abstract of title of such tide lands, together with a copy of the contract or deed issued by the state of Washington and under and by virtue of which the relief is applied for, together with a waiver of any and all claims of any nature whatsoever against the state of Washington that such applicant may have by reason of any such sale, contract or deed. Such waiver shall be in such form as the commissioner of public lands shall prescribe. [L. '15, p. 401, § 2.]

§ 7989. [6768-3.] Examination by Land Commissioner—Filing Certificate.

Upon the filing of any such application and papers thereto attached, as above provided, the commissioner of public lands shall examine the same. He shall also examine and compare the records and files of his office, and if after such examination of the application and the papers thereto attached, together with the records of his office relating thereto, he shall be fully satisfied that the lands sold or conveyed do not lie within the state of Washington, but are situated within the state of Oregon, and if he shall be satisfied that the person, firm or corporation presenting such application is the holder of any such contract or deed, or has succeeded to the rights of those to whom such contract or deed was issued, and are entitled to the relief demanded, he shall prepare a certificate setting forth such facts together with a description of the tide lands, the number of the contract or deed, the date thereof, the amount of moneys received by the state under and by virtue of such contract or deed and file the same with the state auditor: Provided, that the commissioner's refusal to issue a certificate as herein provided shall be final and conclusive and not subject to review. [L. '15, p. 402, § 3.]

§ 7990. [6768-4.] Issuance of Warrants.

The state auditor shall, when such a certificate is filed in his office by the commissioner of public lands, as provided for in the preceding section, draw a warrant in favor of the applicant, as shown by the certificate of the commissioner of public lands and in the amount as set forth in such certificate payable to such applicant, and deliver the same to the commissioner of public lands, who shall in turn deliver the same to the applicant, taking his receipt therefor. Such receipt and the waiver heretofore provided for shall be attached together and filed in the office of the commissioner of public lands. [L. '15, p. 402, § 4.]

§ 7991. Treasurer's Statement of Promissory Notes.

The state treasurer is hereby directed to prepare and transmit to the commissioner of public lands a statement and certificate showing any and all promissory notes now in his possession and unpaid, which were received by him in payment of the purchase price of state tide lands under the act of the legislature approved March 26, 1890; said statement and certificate shall show the amounts and dates of any payments on such notes. [L. '21, p. 172, § 1.]

§ 7992. Cancellation of Certificates of Purchase.

If, upon receipt of such statement and certificate from the state treasurer, it shall appear that any tide land certificate of purchase, issued under the provisions of said act of March 26, 1890, or any promissory note given in payment of said certificate, has not been paid, such certificate is hereby canceled and the commissioner of public lands is hereby authorized and directed to cancel such certificates on his records, and thereafter any tide lands embraced in such certificate shall be and become subject to sale or lease as other tide lands of the state. [L. '21, p. 172, § 2.]

§ 7993. Cancellation of Notes.

Upon cancellation of any certificate for the purchase of tide-lands, as herein provided, for which any promissory notes have been given and which notes are in possession of the state treasurer, the commissioner of public lands shall notify the state treasurer of such cancellation and the date thereof, and the state treasurer shall thereupon indorse upon any note given in payment of such certificate the fact of such cancellation and the date thereof under the provisions of this act. [L. '21, p. 173, § 3.]

CHAPTER XIII.**HARBOR LINES AND AREAS, SALES AND LEASES THEREOF.**

Waterways, across tide lands: See *infra*, §§ 9593—9612.

River and harbor improvement: See *infra*, §§ 9669—9686.

§ 7994. [6769.] Establishment of Harbor Lines and Areas.

It shall be the duty of the harbor line commission to establish harbor lines and harbor areas in front of incorporated cities and towns where no harbor lines and harbor areas shall have theretofore been established, and the said commission shall have power, whenever in the opinion of said commission it shall be necessary, to lengthen or to extend any such areas now existing or which may hereafter be existing in front of any city or town, all as is provided for in Article XV of the Constitution of the state. [L. '07, p. 738, § 1.]

See *supra*, § 7797, state board of land commissioners constitutes the "harbor line commission."

Cited in 93 Wash. 137.

§ 7995. [6770.] Platting and Appraisement of Unsold Tide Lands.

Whenever any harbor lines or harbor areas shall have been established as is provided for in the preceding section it shall be the duty of said commission to plat and appraise any unsold and unplatted tide or shore lands lying between said harbor area and the adjacent upland. [L. '07, p. 738, § 2.]

§ 7996. [6771.] Filing of Plats by Commission.

Said commission shall have authority to file any plat of any harbor area or any plat and the appraisements thereto belonging of any tide or shore lands in sections or as rapidly as the work of platting and ap-

praising may progress whenever said commission shall deem it expedient so to do. [L. '07, p. 738, § 3.]

§ 7997. [6772.] Preference Right, of Abutting Owners, to Purchase.

The owner of any land abutting and fronting upon such tide or shore land shall have the right for sixty days following the filing of the final appraisal of the tide and shore lands with the commissioner of public lands to apply for the purchase of the lands fronting and abutting the land so owned, in the manner provided by the general law of the state governing the contract and sale of tide or shore lands of the first class. [L. '07, p. 739, § 4.]

Cited in 76 Wash. 164.

§ 7998. [6773.] Preference Right, of Abutting Owners, to Lease.

The owner of any land shall have a preference right to lease the harbor area lying in front of his, her or its land, according to the then existing laws of the state: Provided, that such owner shall, within one year after said commission shall have acted as hereinabove provided, apply in writing to said commission, for the right to lease said harbor area: Provided further, that said commission may extend the time in which said applications may be made: And provided further, that if within said year any other person than the said owner shall apply for said harbor area, the commissioner of public lands shall notify said owner of the pendency of said application, and said owner shall be allowed sixty days from the date of the service of the said notice, within which to exercise the preference right herein granted. If said owner be an actual resident of this state, notice shall be served upon him personally; and if he be not a resident of this state, said notice shall be sent to him by mail to his last known address; and if the address of said nonresident be not known to the said commissioner, no notice shall be required. [L. '07, p. 739, § 5.]

§ 7999. [6774.] Harbor Line Areas, How Utilized.

The board of state land commissioners shall have power to lease the right to build and maintain wharves, docks, and other structures upon the harbor areas laid out or which shall hereafter be laid out in pursuance of the provisions of Article XV of the Constitution of the state of Washington for such rental and under such general rules as said board shall prescribe, except in so far as the same are or may be prescribed by law; but no such lease shall be made for any term longer than thirty years. The rental fixed and reserved to the state of Washington in each such lease shall be such sum as said board shall fix. Said board shall require of each such lessee a bond with sufficient surety, to be approved by the commissioner of public lands, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by the board, conditioned for the payment by the lessee of the rental reserved in his lease at or prior to the time of payment therein specified, during the term of such lease or during such part thereof as the board in its discretion shall require to be covered by such bond; and in case only a part of the term of such lease shall be

covered thereby, said board shall require of such lessee another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the lease, or such part thereof as the board in its discretion shall require to be covered thereby. The board shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if it shall find that the same be insufficient it shall require the lessee to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the lease; and the board shall have the power to cancel any lease for a substantial breach by the lessee of any of the conditions thereof, or for lack of a bond therewith as herein required. The application for or the making or acceptance of any lease herein authorized shall not work any estoppel against either party thereto or against those in priority with either party as to any right or claim which might otherwise be made or contested. Any holder of any lease made prior to and in full force on the first day of March, 1899, who has theretofore fully complied with all the requirements of law relative to such leases, but no other person, shall be entitled upon making application therefor to said board to have the rental reserved by his lease adjusted in conformity with the provisions of this section; but such adjustment shall not apply to any rental previously paid or accrued. If the person, association or corporation having the preference right to lease any part of such harbor area has not exercised or shall not exercise such right within such time and in such manner as may be prescribed by said board, in its rules and regulations, then said board whenever it shall deem it advisable that such part should be leased shall give thirty days' notice by publication that a lease of such part of such harbor area for such rental and under such general rules within the limitations of this section as said board shall have prescribed will be sold, at a time and place to be specified in said notices, to the person, association or corporation offering at such public sale to pay to the state the highest sum as a cash bonus for such lease; and upon the giving of such notices such lease shall be sold and made and delivered, accordingly, the payment of the sum offered by the successful bidder being required at the time of such sale. All the rentals derived from the leases herein authorized shall be paid into the state treasury under such regulations as said board may prescribe, and shall constitute a harbor fund to be used as the legislature may direct. Notwithstanding any such lease now or hereafter existing, the state shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage or other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used, and the right to prevent extortion and discrimination in such use thereof. [L. '07, p. 755, § 8. Cf. L. '95, p. 563, § 84; L. '97, p. 255, § 53; L. '99, p. 225, § 1.]

Cited in 19 Wash. 48; 23 Wash. 703.

The term "other structures" is governed by the rule of *eiusdem generis*, and falls within the genus "conveniences of navigation and commerce," and the statute does not contemplate leases for any other

purpose; *State ex rel. Denny v. Bridges*, 19 Wash. 44, 52 Pac. 326, 40 L. R. A. 593.

Lease of Harbor Area: See *Remington's Digest*, Pub. Lands, § 91; *State ex rel. Denny v. Bridges*, 19 Wash. 44,

52 Pac. 326, 40 L. R. A. 593; State ex rel. Trimble v. Bridges, 22 Wash. 98, 60 Pac. 66; State ex rel. White v. Board of State Land Commrs., 23 Wash. 700, 63 Pac. 532.

§ 8000. [6774-1.*] Application by Lessee for Re-lease — Deposit Fee — Surety Bond.

Upon the expiration of any lease of harbor area heretofore or hereafter executed, if the lessee desires to re-lease the harbor area covered by such lease, he may make application therefor to the board of state land commissioners for a re-lease of such harbor area. Such application shall be made within thirty days after the expiration of such lease and shall be in writing and under oath, setting forth the character and value of all improvements existing on the harbor area, the name and postoffice address of the owner thereof, the purpose for which he desires to re-lease the harbor area, the amount considered by such lessee as the reasonable annual rental value thereof, and such other and further information as the board of state land commissioners may require. Said application shall be accompanied by a deposit of ten dollars (\$10), which deposit, if the said harbor area be not leased through the failure or refusal of the applicant to accept a lease at the rate fixed by the board of state land commissioners, shall be forfeited to the state and paid to the state treasurer and credited to the general fund of the state. The board of state land commissioners may, upon the filing of such an application, cause the harbor area applied for to be inspected and a careful investigation of such application made; and if said board shall deem it for the best interests of the state, it may issue to said applicant a re-lease of said harbor area upon such terms and conditions conforming to the provisions of the Constitution of the state of Washington as shall be determined upon by said board: Provided, that every such lessee shall be required to furnish a surety bond as is now provided for in cases of leases of harbor area authorized and executed by said board: And provided further, that this act shall not be construed as affecting or relating to the power and authority of port commissions to lease harbor areas belonging to the state of Washington within the territorial limits of port districts. [L. '17, p. 606, § 11. Cf. L. '15, p. 399, § 1.]

§ 8001. [6775.] Abutting Holder's Preference Right to Lease.

In leasing harbor line areas the owner or lessee of the tide or shore lands abutting the portion of the harbor line area sought to be leased shall have a preference right to lease said areas under the conditions prescribed in section 7999. [L. '95, p. 565, § 85; L. '97, p. 257, § 54.]

This section expired, by limitation, under L. '01, p. 294, § 1; and, also, it is stated, by rule of the board made pursuant to section 7999 in so far as existing harbor areas are concerned. As to harbor areas hereafter laid out or extended, it seems to be superseded or covered by § 7998, supra.

Cited in 54 Wash. 537.

§ 8002. [6776.*] Leasing of Harbor Areas for Booming Purposes.

That the board of state land commissioners be and hereby is authorized to lease any harbor area, tide lands or other lands of the state of Washington, whether the same be now reserved from lease or sale by

any existing act or not, except tidelands or harbor area in front of any incorporated city or town or within two miles thereof on either side, and excepting any oyster reserve containing oysters in merchantable quantities, to any person, firm or corporation, for booming purposes. Such leases shall not be granted for a longer term than ten years from the date thereof; and the board of state land commissioners shall prior to the issuance of any such lease fix an annual rental for the lands leased, and prescribe the terms and conditions of the lease. The board may declare a forfeiture of any lease for a violation of any of the terms or conditions thereof. Any person, firm or corporation leasing any lands under the provisions of this act shall receive, hold and assort the logs and other timber products of all persons requesting such service, and upon the same terms and without discrimination, and may charge and collect tolls on all logs or other timber products so handled, said tolls not to exceed seventy-five cents per thousand on all logs, spars or other large timber, and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the same are applicable, as are imposed upon boom companies organized under the laws of this state. Failure to use any lands leased under the provisions of this act for boom purposes for a period of more than one year shall work a forfeiture of the lease, and such lands shall revert to the state without any notice or declaration of forfeiture. At the expiration of any lease issued under the provisions of this act, the original lessee shall have the preference right to re-lease the lands covered by his original lease for a further term, not to exceed ten years, at such rental and upon such terms and conditions as may be prescribed by the board of state land commissioners. [L. '17, p. 607, § 12; L. '11, p. 388, § 1. Cf. L. '07, p. 575, § 1.]

§ 8003. Sale of Material on State Lands for Highway Construction.

Any county, city or town desiring to purchase any stone, rock, gravel or sand upon any of the public lands of the state, including tide and shore lands, to be used in the construction, maintenance or repair of any public street, road or highway within such county, city or town, may file with the board of state land commissioners an application for the purchase thereof, as hereinafter provided. Such application shall set forth the quantity and kind of material which the said county, city or town desires to purchase, the location thereof and the street, road or highway upon which the same is to be used. The board of state land commissioners upon the receipt of such an application is authorized to sell said material in such manner and upon such terms as they deem advisable and for the best interests of the state: Provided, however, that such material shall in no case be sold for less than the fair market value thereof. [L. '17, p. 608, § 13.]

§ 8004. Leasing of First Class Tide and Shore Lands for Booming Purposes.

The commissioner of public lands is hereby authorized to lease to the abutting upland owner any unplatted tide or shore lands within or in front of the limits of any incorporated city or town, or within two

miles thereof on either side: Provided, that any such unplatted tide or shore lands, for which no application to lease has been filed by the upland owner, may be leased to any person, firm or corporation for booming purposes: Provided, further, that no upland tide or shore lands situated in front of improved upland occupied for residential purposes shall be leased for booming purposes. [L. '21, p. 377, § 1.]

§ 8005. Term and Termination of Lease.

Any lease under this act shall not be granted for a longer term than ten (10) years from the date thereof and shall be subject to termination upon a ninety (90) day notice in the event that the commissioner of public lands shall decide that said tide or shore lands are to be surveyed and platted. The commissioner of public lands shall, prior to the issuance of any such lease, fix an annual rental for the lands so leased and prescribe the terms and conditions of said lease. Failure to use any such lands leased for booming purposes under the provisions of this act, for booming purposes, for a period of more than one (1) year shall work a forfeiture of such lease and such land shall revert to the state without any notice or declaration of forfeiture. [L. '21, p. 378, § 2.]

§ 8006. [6777.] Power to Relocate Inner Harbor Lines.

Whenever it appears that the inner line of any harbor areas heretofore located has been so established as to overlap or fall inside of the government meander line, or for any other good cause, said commission is empowered to relocate and re-establish said inner line so erroneously established and outside of said meander line, and said inner line so re-established and relocated may be sold as other tide lands of like class in accordance with the provisions of this chapter. And any owner of upland having improvements situated on the tide lands in front of and abutting on said upland, not being tide lands of the first class, shall have a preference right to purchase said tide lands at five dollars per lineal chain measure along the United States meander line until July 1, 1897, whether applications have been filed or contests exist therefor or not: Provided, that this act shall not apply to tide lands sold or conveyed by contracts or patents already issued. [Cf. L. '95, p. 565, § 87; L. '97, p. 257, § 55.]

See infra, §§ 9593—9600, public ways to harbors.

See infra, §§ 9613—9616, erection of wharves, and notes.

§ 8007. [6778.] Harbor Area Improvements Exempt from Taxation, When.

When improvements have been made on tide lands or lands under water in front of towns or cities, prior to the location of harbor lines in such towns or cities, by the state board of harbor line commissioners, and the reserved harbor area as located includes such improvements, no distraint or sale of such improvements for taxes shall be had until six months after said lands shall have been leased or offered for lease from or by such board, as shall be authorized by law to execute leases of tracts embraced within the reserved harbor area of the state: Provided,

that this act shall not apply to any tract or tracts that said board shall decide not to lease or otherwise dispose of, and shall not affect or impair the lien for taxes on said improvements. [L. '97, p. 260, § 61.]

§ 8008. [6779.] Power to Expend Improvement Fund.

Said harbor line commission shall have full power and authority to expend the moneys appropriated under an act entitled "An act relating to the improvement of harbors and waterways of the state of Washington," approved March 10, 1891; and all powers vested by the act last mentioned in the harbor line commission therein mentioned are hereby transferred in and devolved upon said harbor line commission provided for in this chapter, hereby created, and said commission is hereby authorized to draw warrants upon the state treasurer against the harbor improvement fund of the proper city for the amounts of all expenditures made by them in the improvement of harbors in pursuance of said act last mentioned, or of any law in force for the time being, and are hereby vested with all powers and authority necessary to carry into effect the full intent and purpose of said act, and of all provisions of law relative to the improvement or leasing of harbor areas; and the necessary and actual expenses of the said commission or any of its members in discharge of such duties, whether for traveling expenses or for materials, or for clerical, expert or other assistance, shall be audited by the state auditor on properly authenticated vouchers, and paid by the state treasurer on the warrant of the said auditor out of said harbor improvement fund. [L. '95, p. 566, § 90; L. '97, p. 258, § 57.]

See note to § 7994, harbor line commission.

The act creating the improvement fund mentioned is superseded by § 5509, *supra*. This section is, accordingly, obsolete, except perhaps as to the general authority conferred respecting the leasing of harbor areas, and to expenses connected therewith.

Cited in 18 Wash. 503.

§ 8009. [6780.] Sales and Deeds of Street Extensions to be Canceled.

Whereas, the board of state land commissioners has heretofore received and considered applications for, and has issued contracts or deeds purporting to convey to private persons or corporations certain lots platted on the tideland areas within the harbors of cities of the first class, which said lots are in reality legally established projections or extensions of public streets within the corporate limits and along or across the harbor areas of such cities, which said projections and extensions were duly made by said cities in pursuance of the act of March 24, 1890, relating to the charters of cities of twenty thousand inhabitants and upwards, therefore, the board of state land commissioners is hereby instructed to cancel all deeds or contracts, and to reject all applications covering any such street extensions or projections which are not duly vacated, refunding all moneys paid thereon, and no sale or grant of any land included within the limits of any such street shall hereafter be made unless and until the same shall be duly vacated or disestablished by the authorities of such city. The state auditor is hereby authorized to draw such warrants upon the tidelands fund as are necessary to carry out the provisions hereof. [L. '97, p. 30, § 1.]

Cited in 42 Wash. 423, 424.

This section has no application to a contract made subsequently to the legal

vacation of such streets: Henry v. Seattle, 42 Wash 420, 85 Pac. 24.

§ 8010. [6781.] Successor of State Board shall Act.

The powers hereby conferred and duties imposed upon the board of state land commissioners shall be possessed and exercised by any other board or officer who may hereafter succeed to the jurisdiction and powers, in respect to tide lands, now possessed by the state board of land commissioners. [L. '97, p. 31, § 2.]

§ 8011. [6781-1.] Lease by Port Commission.

The port commission of each port district heretofore created or hereafter to be created under the laws of the state of Washington, shall have full power and authority to lease the harbor areas and tide lands belonging to the state of Washington situate within the territorial limits of such port district to such persons and upon such terms and conditions conforming to the provisions of the Constitution of the state of Washington as shall be determined by resolution of such port commission. Every such lease shall provide that the rentals thereunder shall be payable to the state treasurer. [L. '13, p. 585, § 1.]

§ 8012. [6781-2.] Preference Rights to Abutting Owners.

The owner of any tide or shore lands abutting any such harbor area shall have the preference right, to be exercised by written application filed within ninety (90) days following the filing of the plat of any tide or shore lands hereafter to be filed, covering tide or shore lands or harbor area within the limits of any port district, or in case of plats heretofore filed, then within ninety (90) days following the taking effect of this act, to obtain a lease of the harbor area abutting his tide land or shore land for a thirty (30) year period, and every lease obtained by virtue of the exercise of such preference right shall conform to the provisions of the state Constitution and shall provide that the harbor area described therein, or such a reasonable portion thereof as shall be designated by the port commission of such port district, having in view the requirements of the business proposed to be carried on thereon, shall be improved upon plans approved by such port commission, the construction of such improvement to be commenced within such time as may be fixed in each case by such port commission, such time to be in no case less than two (2) years from the date of such lease and be completed within such reasonable time thereafter as such port commission shall fix in each case, any of which times so fixed may be thereafter extended by such commission, the character of which improvements may, with the approval of the port commission, be changed either before or after completion, but in all cases where the abutting owner or one claiming under him had prior to February 22, 1913, built upon such area, his improvements shall, so far as otherwise conforming to the provisions of the state Constitution, be recognized and accepted as a sufficient compliance with the requirements of this act so far as concerns the area covered thereby, and as to uncovered area such improvements shall be given the same

consideration as in other cases, and every lease obtained by virtue of such preference shall further provide that the annual rental to be paid shall be a sum equal to two per cent of the assessed valuation for the year preceding the date of such lease of an equal area of adjoining or abutting shore or tide lands, exclusive of improvements thereon, and where the adjoining or abutting strip of shore or tide lands is of less width than the harbor area, a value proportional to said width: Provided further, however, that the foregoing provision fixing the rate of rental shall not extend beyond December 31, 1928, but all rentals after that date shall be subject to be controlled and fixed in the manner and by the public authority or authorities then provided by law for the same: Provided, further, that it shall not be necessary for any public corporation proposing to make use of any such harbor area to acquire by condemnation or otherwise the preference right hereby granted relating thereto, but nothing herein contained shall be construed to deprive any party to any such condemnation proceeding of any damages to which he would have been entitled if this act had not been passed. [L. '13, p. 585, § 2.]

§ 8013. [6781-3.] Bond of Lessee—Rates.

The port commission shall require of every lessee under this act a bond with sufficient surety, to be approved by the port commission, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by the port commission, conditioned for the payment by the lessee of the rental reserved in his lease at or prior to the time of payment therein specified, during the term of such lease or during such part thereof as the port commission in its discretion shall require to be covered by such bond; and in case only a part of the term of such lease shall be covered thereby, said port commission shall require of such lessee another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the lease, or such part thereof as the port commission in its discretion shall require to be covered thereby. The port commission shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if it shall find the same to be insufficient it shall require the lessee to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the lease; and the port commission shall have power upon sixty days' notice to cancel any lease for a substantial breach by the lessee of any of the conditions thereof, or for lack of a bond therewith as herein required. Notwithstanding any such lease now or hereafter existing the state shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage or other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used, and the right to prevent extortion and discrimination in such use thereof. [L. '13, p. 587, § 3.]

§ 8014. [6781-4.] Preference Right to Re-lease.

The lessee under any lease now existing of harbor area situate in a port district, which shall be canceled or annulled for any reason, shall,

upon each cancellation or annulment, have, ninety (90) days thereafter, a preference right to a new lease, for the remainder of the term of the lease canceled or annulled, upon the terms and conditions provided in sections 8012 and 8013, but in all cases where any canceled or annulled lease contained provisions relating to the right of the state to annul or cancel the same, like provisions shall be incorporated in any new lease covering in whole or in part the same area. [L. '13, p. 588, § 4.]

§ 8015. [6781-5.] Preference Rights Annulled.

All preferences of lease of harbor areas or tidelands situate in a port district heretofore created by the laws of the state of Washington, which have not been already exercised are hereby annulled. [L. '13, p. 588, § 5.]

§ 8016. [6781-6.] Rentals from Harbor Areas and Tide Lands.

That the rents hereinafter to be paid under existing or future leases of harbor areas and also of tidelands belonging to the state of Washington, shall be hereafter disposed of as follows:

In cases where the leased harbor area or tide land is situated within the territorial limits of a port district already created or to be hereafter created under the laws of the state of Washington, seventy-five (75) per cent of the rents received for such cases shall be paid by the state treasurer to the county treasurer of the county wherein such port district is situated for the use of such port district and go into a special fund to be expended only for harbor or waterfront improvement purposes and the remaining twenty-five (25) per cent, shall be paid into the general fund of the state treasury; except that in cases where the port district itself shall have constructed or shall own structures or improvements situate upon leased harbor areas, or tide lands, the entire rentals of such improved area or tide land shall go to such port district. In all other cases seventy-five (75) per cent of the rents shall be paid by the state treasurer into the county treasury of the county in which the leased harbor areas or tidelands are situate, the same to go into a special fund known as the "harbor improvement fund," and to be disbursed only for harbor or harbor improvement purposes; and the remaining twenty-five (25) per cent shall be paid into the general fund of the state treasury. The state treasurer being hereby authorized and directed to make such payments to the respective county treasurers for the use of such port districts or counties, as the case may be, on the first days of July and January of each year, of all moneys in his hands on such dates payable under the terms of this act to such port districts and counties respectively. [L. '13, p. 588, § 1.]

§ 8017. [6781-7.] Use of Harbor Area—Structures Built by Permission of Land Commissioners—Terms and Conditions.

Whenever, in any waterways created under the laws of the state of Washington, the government of the United States shall have established pierhead lines in said waterway at any distance from the boundaries thereof established by the state, no structure shall be allowed in the strip of waterway between the boundary and the nearest pierhead line

except by the consent of the state land commissioner and upon plans approved and terms and conditions fixed by him, and then only for such period of use as shall be designated by him, but any permit shall not extend for a longer period than thirty (30) years: Provided, however, that the owner of land abutting upon either side of any such waterway shall have the right, if application be made therefor within a period of ninety (90) days following the date when this act shall go into effect, to obtain such a permit for a thirty (30) year term and every permit obtained by virtue of the exercise of such right shall provide that the area described therein or such reasonable portion thereof as shall be designated by the state land commissioner, having in view the requirements of the business proposed to be carried on thereon, shall be improved upon plans approved by the state land commissioner, the construction of such improvements to be commenced within such time as may be fixed in each case by the state land commissioner, such time to be in no case less than two (2) years from the date of such permit, to be completed within such reasonable time thereafter as the state land commissioner shall fix in each case, any of which times so fixed may be thereafter extended by him, the character of which improvements may be changed either before or after completion with the consent of the state land commissioner, but in all cases where the abutting owner or one claiming under him had prior to February 22, 1913, built upon such area, his improvements shall be recognized and accepted as a sufficient compliance with the requirements of this act so far as concerns the area covered thereby, and as to uncovered area such improvements shall be given the same consideration as in other cases, and every permit obtained by virtue of the exercise of such right shall further provide that the annual rental to be paid shall be a sum equal to two per cent of the assessed valuation for the year preceding the date of such permit of an equal area of adjoining or abutting shore or tidelands, exclusive of improvements thereon, and where the adjoining or abutting strip of shore or tidelands is of less width than the harbor area, a value proportional to said width: Provided further, however, that the foregoing provision fixing the rate of rental shall not extend beyond December 31, 1928, but all rentals after that date shall be subject to be controlled and fixed in the manner and by the public authority or authorities then provided by law for the same: Provided further, that it shall not be necessary for any public corporation proposing to make use of any such strip of waterway to acquire by condemnation or otherwise the right hereby granted relating thereto, but nothing herein contained shall be construed to deprive any party to any such condemnation proceeding of any damages to which he would have been entitled if this act had not been passed. The state land commissioner shall require of the holder of every permit under this act a bond with sufficient surety, to be approved by said commissioner, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by said commissioner, conditioned for the payment of the rental reserved in the permit at or prior to the time of payment therein specified, during the term of such permit or during such part thereof as said commissioner in his discretion shall

require to be covered by such bond; and in case only a part of the term of such permit shall be covered thereby, said commissioner shall require another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the permit, or such part thereof as said commissioner in his discretion shall require to be covered thereby. The said commissioner shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if he shall find the same to be insufficient he shall require the holder of the permit to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the permit; and the said commissioner shall have power upon sixty days' notice to cancel any permit for a substantial breach by the holder thereof of any of the conditions thereof, or for lack of a bond therewith as herein required. In any case where such waterway shall be within the territorial limits of a port district organized under the laws of the state of Washington, the duties herein assigned to the state land commissioner shall be exercised by the port commission of such port district, and in every case the rentals received shall be disposed of as follows: Seventy-five (75) per cent shall be paid by the state treasurer to the county treasurer of the county wherein such port district is situated, for the use of said port district and twenty-five (25) per cent, into the state treasury, except that in cases where the port district itself shall have constructed or shall own structures or improvements situate upon such strip of waterway the entire rentals for such improved strip of waterway shall be paid directly to such county treasurer for the use of such port district. Nothing herein contained shall confer upon, create or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of such street, but the control of and the right to use such strip is hereby reserved to the state of Washington, except that in cases situate in a port district such control and use shall vest in such port district. [L. '13, p. 582, § 1.]

CHAPTER XIV.

LEASING MINERAL LANDS.

§ 8018. [6782.*] Empowering Commissioner to Lease.

The commissioner of public lands of the state of Washington is hereby authorized to execute leases and contracts for the mining of gold, silver, copper, lead, cinnabar or other valuable minerals, except coal, from any land now belonging to the state or from any lands to which the state may hereafter acquire title, subject to the conditions hereinafter provided. [L. '17, p. 599, § 1; L. '15, p. 440, § 1. Cf. L. '97, p. 293, § 1.]

See supra, § 7880 et seq., leasing of school and granted lands.

Cited in 104 Wash. 81; 108 Wash. 672.

§ 8019. [6782-1.] Validation of Existing Leases.

That leases and contracts heretofore entered into and executed by the commissioner of public lands for the mining of gold, silver, copper,

lead, cinnabar or other valuable minerals except coal, from tide or shore lands be and the same are hereby validated. [L. '15, p. 441, § 2.]

§ 8020. [6783.*] Prospecting Leases.

Any citizen of the United States finding precious minerals upon any lands now or hereafter belonging to the state of Washington, may apply to the commissioner of public lands for a lease of any amount not exceeding eighty acres, for prospecting purposes, such application to be made by legal subdivisions according to the public land surveys. [L. '17, p. 599, § 2. L. '97, p. 293, § 2; L. '01, p. 313, § 1.]

Cited in 55 Wash. 243; 104 Wash. 81, 83.

This section leaves no discretion in the commissioner of public lands where the law has been complied with: State ex rel. Pindall v. Ross, 55 Wash. 242, 104 Pac. 216.

The commissioner of public lands is not limited in the execution of leases of state mineral lands, for prospecting purposes, to the government legal subdivisions of a section: State ex rel. Pindall v. Ross, 55 Wash. 242, 104 Pac. 216.

The amendment of 1917 impliedly repeals other provisions of the law requiring as a condition precedent to a lease that the applicant set corner posts and post location notices as required for the location of mineral claims on the public domain: State ex rel. Sims v. Savidge, 104 Wash. 79, 175 Pac. 568.

The commissioner has no discretion to reserve to the state the timber and other materials except those granted by the lease: State ex rel. Morris v. Savidge, 108 Wash. 671, 185 Pac. 597.

§ 8021. [6784.] Manner of Locating.

The manner of locating a mineral claim upon state land shall be similar to the state law regulating locating mineral claims on government land: Provided, that any citizens that have found minerals on state lands previous to the passage of this act and have posted up notice setting forth the dimensions according to the mining law of the United States and the state of Washington, shall have prior right to lease the same, and shall have ninety days after the passage of this act to make application to the commissioner of public lands for a lease. [L. '97, p. 293, § 3.]

Cited in 104 Wash. 82.

§ 8022. [6785.] Necessary Timber Privileges..

The lessee may cut and use the timber found upon said premises for fuel and construction of buildings, required in the operation of any mine or mines on the premises; also the timber necessary for drains, tramways and supports for such mine or mines, and for no other purpose. [L. '97, p. 293, § 4.]

Cited in 108 Wash. 673.

Right of cutting timber on mineral

lands. Ann. Cas. 1917A, 12; 70 L. R. A. 904.

§ 8023. [6786.] License Fee—Development.

Before any lease shall be granted, the applicant shall pay to the state treasurer the sum of five dollars for each forty acres or fraction thereof. The holder of a mineral lease, secured as above stated, shall have two years to develop said mine or mines: Provided, that no more than five tons of ore shall be removed therefrom for assaying or testing purposes until a contract, as hereinafter provided, shall have been executed. [L. '97, p. 293, § 5; L. '01, p. 313, § 2.]

Cited in 104 Wash. 82.

§ 8024. [6787.*] Lessee's Right to Contract—Form.

At any time prior to the expiration of any prospecting lease the leaseholder or assignee thereof may apply to the commissioner of public lands for a contract to mine the lands covered by said lease and extract and dispose of the minerals therefrom. The commissioner of public lands shall upon receipt of such an application make a full investigation of the properties and if the land included in said lease shall be found to contain any of the valuable mineral deposits included in section 8018 the said commissioner shall thereupon accept said application and the applicant for said contract shall thereupon within thirty (30) days after notice from the commissioner of public lands that said application has been accepted and approved, enter into a contract for the working and mining of said property which contract shall be substantially in the following form:

"This indenture, made this — day of —, A. D., one thousand nine hundred and —, by and between the state of Washington, party of the first part, and —, whose postoffice address is —, state of —, party of the second part.

Witnesseth, that the party of the first part in consideration of the sum of — dollars to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the same being the first annual payment to be made hereunder, and in further consideration of the covenants and conditions herein contained, to be kept and performed by the party of the second part, does hereby contract, lease and demise to the party of the second part, for the term of — years (here shall be inserted the number of years asked for by the applicant—not exceeding thirty years in all) from and after the — day of —, one thousand nine hundred and —, the following described land situate in the county of —, state of Washington, viz.: —, which premises are leased to the party of the second part for the purpose of exploring for and mining and taking out and removing therefrom the ore therein contained, containing copper, silver, lead, gold and other valuable minerals (except coal), which is or which hereafter may be found in, on or under said land, together with the right to construct all buildings, make all excavations, openings, ditches, drains, railroads, wagon roads, concentrators, power plants, smelters and other improvements upon said premises which are or may become necessary or suitable for the mining or removal of ore containing copper, lead, silver, gold or other valuable minerals from said premises with the right, during the existence of this contract and lease to cut and use the timber found upon said premises for fuel and so far also as may be necessary, for the construction of buildings required in the operation of any mines [mine] or mines on the premises hereby leased and also the timber necessary for drains, tramways and supports for such mine or mines: Provided, that the party of the second part shall have the right at any time to terminate this agreement in so far as it requires the party of the second part to mine ore on said land or to pay a royalty, therefor, by giving written notice to the party of the first part which shall be served by leaving the same with the commissioner of public lands, who shall officially, in writing, acknowledge the receipt of said notice and the foregoing contract shall terminate sixty (60) days thereafter and all arrears and sums which may be due under the same up to the time of its

termination as set forth in said notice shall be paid upon settlement and adjustment thereof. The party of the first part further agrees that the party of the second part shall have the right under this agreement to contract with others to work such mine or mines or any part thereof or to subcontract the same and the use of the said land or any part thereof for the purpose of mining for ore with the same rights and privileges as are herein granted to the said party of the second part. The party of the second part agrees that he will in each year during the life of this lease perform work or make improvements upon the premises hereinbefore described to an amount of not less than one hundred dollars (\$100) for each twenty (20) acres included therein and will file with the commissioner of public lands an affidavit of the performance of said work, which affidavit shall give the nature and extent thereof. And it is further expressly agreed that if the party of the second part shall fail to perform said labor as hereinbefore provided that said lease shall then, at the option of the commissioner of public lands, be forfeitable and the commissioner of public lands shall thereupon, if he shall elect to forfeit this lease and contract, serve upon the party of the second part, or his assignee, if notice of such assignment has been given to the commissioner of public lands, a notice that unless he performs such work within ninety (90) days after the giving of said notice, that this contract and lease shall thereupon become forfeited, terminated and at an end, such ninety (90) day period to commence from the date said notice is mailed by the commissioner of public lands, all such notices to be given by registered mail and if the address of the holder of this contract is unknown then such notice shall be given by posting a copy thereof on said land at the point of any mining operations thereon, which notice shall thereupon be deemed sufficient." [L. '17, p. 599, § 3. Cf. L. '97, p. 294, § 6; L. '99, p. 337, § 1.]

"This act" refers to this chapter.

Cited in 104 Wash. 82.

§ 8025. [6788.*] Terms of Leasing—Royalty to State.

The terms and conditions on which the land covered by said contract and lease may be mined and the royalties ascertained and paid shall be agreed upon by the commissioner of public lands and the contract-holder: Provided, that such contract and lease shall provide for the payment to the state of a royalty of not less than one per cent (1%) nor more than four per cent (4%) of all moneys received from the sale of minerals from said lands covered by said contract and lease after deducting therefrom the cost of transportation and treatment: And provided further, that in addition to the royalty herein provided for, the contract holder and lessee shall pay an annual rental of ten dollars (\$10) for each forty (40) acres, or fraction thereof included in said contract and lease. [L. '17, p. 602, § 4; L. '97, p. 249, § 7; L. '01, p. 314, § 3.]

Cited in 31 Wash. 494.

§ 8026. [6790.] Lessee's Prior Right to New Lease.

Within sixty days prior to the expiration of the lease, the lessee may apply to the commissioner of public lands for a new lease. Therefore the commissioner of public lands shall give said applicant a prior right, and

shall, upon the expiration of the old lease issue a new lease to the former lessee on terms as may be provided by law. [L. '01, p. 314, § 4.]

This section may not be within the title of the act, which was limited to the amendments made by §§ 8020, 8023 and 8025.

§ 8027. Mining Contracts on Lands Leased or Sold by State.

The commissioner of public lands of the state of Washington is hereby authorized to execute leases and contracts for the mining of gold, silver, copper, lead, cinnabar or other valuable minerals from any lands sold or leased by the state, the minerals of which have been reserved by the state. Any citizen of the United States finding[s] minerals upon any lands which the state of Washington may have sold or leased and reserved the mineral rights thereon, may apply to the commissioner of public lands for a lease of any amount not exceeding eighty (80) acres, for prospecting purposes, such application to be made by legal subdivision, according to the public land surveys. Upon the filing of any such application, the commissioner of public lands shall set the same down for hearing at a date not less than thirty (30) nor more than sixty (60) days from the date of filing the application, and shall notify the applicant and the owner or lessee of the lands, the mineral rights in which have been reserved by the state, of the time and place of said hearing. Before the date of the hearing, the commissioner of public lands shall make a full investigation of the lands and the feasibility of extracting minerals found upon said lands, and of the probable amount of damages which will accrue to said lands by reason of extracting mineral therefrom. If at said hearing it shall appear that said lands do not contain valuable mineral in sufficient quantities to warrant the extraction thereof, the commissioner shall reject such application. From any decision of the commissioner rejecting an application, the applicant may appeal to the superior court of Thurston county by filing a notice of appeal with the clerk of the court and serving a copy thereof upon the commissioner and upon the owner or lessee of the lands, the mineral rights in which have been reserved by the state; and all such appeals shall be heard de novo and speedily determined. If, at such hearing before the commissioner, it shall appear that the lands contain valuable mineral in such quantities as to warrant the extraction thereof, the commissioner shall determine the amount of damages which will accrue to the owner or lessee of the lands by reason of entry thereon and the extraction of minerals therefrom and shall determine the terms and conditions upon which said right to enter upon said lands and extracting minerals shall be leased, the time and duration of such lease, the royalties to be paid to the state under such lease and shall impose such other regulations as may be deemed proper to safeguard the interest of the state and of the owner or lessee of the land and shall execute and deliver to the applicant a contract of lease embodying the conditions and regulations so determined and imposed. [L. '17, p. 602, § 5.]

CHAPTER XV.

LEASING PETROLEUM AND NATURAL GAS LANDS.

§ 8028. [6791.] Commissioner Empowered to Lease.

The commissioner of public lands of the state of Washington is hereby authorized to execute leases and contracts for the mining and extraction of petroleum and natural gas from any land belonging to the state or from any lands in which the state may hereafter acquire title, subject to the conditions hereinafter provided. [L. '01, p. 218, § 1.]

Cited in 93 Wash. 679; 110 Wash. 619.

This section applies to lands which have been sold by the state under section 7873, reserving to the state all oils, gases and minerals, and leaves no dis-

cretion in the commissioner where a qualified person has duly applied. State ex rel. Hall v. Savidge, 93 Wash. 676, 161 Pac. 471.

§ 8029. [6792.] Who may Apply.

Any citizen of the United States finding petroleum or natural gas upon any lands belonging to the state of Washington may apply to the commissioner of public lands for a lease of any amount of such land not to exceed one section. [L. '01, p. 218, § 2.]

Cited in 110 Wash. 619, 621.

Under section 7833, classifying tide lands as public lands and providing that "public lands" and "state lands" are synonymous, tide lands are "lands belonging to the state" within the meaning of this section authorizing oil and mining leases: State ex rel. Stetson v. Savidge, 110 Wash. 618, 188 Pac. 923.

Under this section the courts will not require the commissioner of public lands to execute an oil lease of unsurveyed tide lands described as "all tide lands belonging to the state" abutting on certain sec-

tions "containing 640 acres," where the area could not be ascertained without an actual survey, for which the state had made no provision: State ex rel. Stetson v. Savidge, 110 Wash. 618, 188 Pac. 923.

The commissioner of public lands has no authority to execute a mining and oil lease of tide lands on the Pacific Ocean beach which by Laws of 1901, page 217, are declared to be a public highway and forever withdrawn from sale, lease, or other disposition: State ex rel. Ernst v. Savidge, 110 Wash. 81, 187 Pac. 1089.

§ 8030. [6793.] Manner of Application.

Application shall be made in like manner as the application is made for the leasing of agricultural lands. [L. '01, p. 218, § 3.]

§ 8031. [6794.*] Terms of Lease—Royalty—Limitation of Time.

No lease or re-lease shall be made by the state for any sum less than fifteen cents per acre for the first year, thirty cents per acre for the second year, forty cents per acre for the third year, fifty cents per acre for the fourth year, and sixty cents per acre for the fifth year, and each year thereafter during said term of the lease, and in addition thereto the said lease shall provide that the state shall be entitled to receive a sum not less than ten per cent of the gross value of all petroleum and natural gas extracted from the land described in the lease during the term of said lease, payable semi-annually during said term: Provided, that all rentals accruing during the period of actual production shall at each semi-annual royalty payment date be deducted from royalties to be paid to the state. The term "gross value" shall be interpreted to mean the value of the oil or gas at the well when produced, without deduction for expense of pro-

duction. The term of any such lease shall not exceed twenty years. [L. '21, p. 569, § 1; L. '19, p. 434, § 1; L. '15, p. 415, § 9. Cf. L. '01, p. 218, § 4.]

See note to § 8039.

Covenant for diligent prosecution of work in oil lease. 20 Ann. Cas. 1165; Ann. Cas. 1917E, 1120.

§ 8032. [6795.] Reports and Accounting of Lessee.

Persons leasing lands under the provisions of this chapter shall mine, take out, keep, maintain, ship and sell all petroleum and natural gas mined upon or taken from the lands so leased, separate and distinct from all like products taken from other lands, and shall submit to the commissioner of public lands, at stated periods to be fixed by said commissioner, a statement showing the total product taken from said leased lands, the total shipments of such products, and an account showing the sales of all such products. The commissioner shall make all necessary rules and regulations necessary to carry out the provisions of this chapter, and to protect the interests of the state. The books and accounts of every person leasing lands under the provisions of this chapter shall be open to inspection by the state land commissioner, or such persons as he may designate at all times, and the property leased, together with all buildings, machinery, storage tanks and appliances of every kind and nature whatsoever, shall be subject to inspection and examination by the land commissioner. The reports required under this chapter shall be made under oath, upon forms prescribed by the commissioner. Failure on the part of any lessee hereunder to comply with the terms and conditions of this chapter, or of his lease, shall forthwith work a forfeiture of the lease. No such forfeiture may be waived. The commissioner of public lands shall incorporate in every such lease such other provisions and conditions not inconsistent with the provisions and conditions contained in this chapter as may in his judgment be advantageous to the state. [L. '01, p. 219, § 5.]

§ 8033. [6796.] Preference Right of Agricultural Lessee.

Any person now holding leases for agricultural purposes shall have a first right to lease the lands held by them as lessees of the state of Washington, and upon notice to them by the commissioner of public lands they shall within thirty days thereafter exercise their right to lease said lands under the provisions of this chapter, and upon their failure so to do their right to lease such land for mining for petroleum and natural gas shall be at an end, and the said land shall be deemed to be open and unoccupied public lands for the purposes of this chapter only, and the same shall be subject to lease for mining for petroleum and natural gas as if the same were fully owned and in the possession of the state. Any person so holding the lands of the state for agricultural purposes who shall within sixty days from the adoption of this chapter fail to apply to the state land commissioner for such lands shall forfeit all preference to them granted under the terms of this chapter. [L. '01, p. 219, § 6.]

§ 8034. [6797.*] Work under Lease Necessary to its Validity.

All leases under the terms of this chapter shall be deemed to be void and of no effect unless the lessee or his assigns shall commence the work

of drilling or boring for petroleum oil and gas within such period as may be designated by the commissioner of public lands, not exceeding five years from and after the date of execution of such lease: Provided, that such work of development shall proceed continuously and at no time cease for a greater period than ninety (90) days: And provided further, that whenever oil or natural gas be discovered by such work in paying quantities then no further work need be done under the terms of such lease than to mine, secure and store the same, but failure to operate after discovery of oil or natural gas in paying quantities for any period of ninety (90) consecutive days shall work a forfeiture of the lease: Provided, however, that if in the event of any failure to operate as continuously as herein provided, such failure to operate should be due to no fault or negligence of the lessee, or if for any sufficient reason such as market conditions, lack or failure of transportation or from other good and sufficient cause, the best interests of the state of Washington and the lessee should make desirable and expedient a temporary suspension of operation and production, then and in any such event the commissioner may from time to time grant permit or permits for such suspension of operation and production without in any way affecting the validity of the lease. [L. '21, p. 569, § 2; L. '19, p. 435, § 2; L. '01, p. 220, § 7.]

See note to § 8039.

§ 8035. [6798.] Damages to Agricultural Lessee.

If land is leased by the state upon which an existing lease for agricultural purposes is held by some person other than the lessee under the terms of this chapter, that the lessee hereunder shall pay to such person so holding said land under lease for agricultural purposes reasonable compensation for any and all damages sustained by him to growing crops or for the use of said premises during the development of the said petroleum and natural gas lands by mining and boring and holding possession thereof. [L. '01, p. 220, § 8.]

§ 8036. Re-lease Conditions—Improvements—Removal.

If, at the expiration of any such lease for the mining and extraction of petroleum or natural gas, or any renewal thereof, the lessee desires to re-lease the lands covered thereby, he may make application to the commissioner of public lands for a re-lease. Such application shall be made within thirty days after the expiration of the lease, and shall be in writing and under oath, setting forth the character and value of all improvements existing on the land, the name and postoffice address of the owner thereof, the purpose for which he desires to re-lease the land, and such other information as the commissioner of public lands may require, and shall be accompanied with a deposit of ten dollars (\$10), which deposit, if the land be not leased, through the failure or refusal of the applicant to accept a lease at the rate fixed by the commissioner of public lands, shall be forfeited to the state and by the commissioner paid to the state treasurer and credited to the general fund of the state. The commissioner of public lands may, upon the filing of such application, cause the lands to be inspected by a state land inspector; and if he deems it for the best interests of the state to re-lease said lands, he shall fix the rental value

thereof, which rental value shall in no case be less than the original rental provided in this act, and, upon receipt of the first year's rental, together with the fees required by law, the commissioner of public lands shall issue to the applicant a renewal lease for any period not exceeding twenty years. The commissioner of public lands shall notify the applicant by mail, of the rental value fixed, and if, within thirty days after the date of such notice, the applicant fails or refuses to pay to the commissioner of public lands the first year's rental, together with the statutory fee for issuing a lease, the application shall be rejected and the applicant thereunder permitted to remove such improvements from the land as may be removed without injury thereto, within ninety days from such rejection; the commissioner of public lands may cause such of the improvements remaining as in his judgment will add value to the land for leasing purposes to be appraised, in the same manner as in the case of the sale of land, offer the land for lease at public auction to the highest bidder, as provided for original leases, and if the successful bidder be not the owner of the improvements, he shall deposit with the officer making the sale the appraised value of the improvements. The amount so deposited as the appraised value of the improvements, together with the first year's rental and the fees required by law, shall be transmitted to the commissioner of public lands, and upon confirmation of the lease by the commissioner of public lands, the amount so deposited in payment for the improvements shall be disposed of by the commissioner of public lands in the same manner as in the case of the sale of the land: Provided, that no bid shall be received for less than the minimum price fixed by the commissioner of public lands. [L. '21, p. 570, § 3; L. '19, p. 435, § 3.]

See note to § 8039.

§ 8037. Application of Act.

The provisions of this act shall be and are hereby made applicable to all leases heretofore executed by the state of Washington and which are not in default. [L. '19, p. 437, § 4.]

"This act" refers to §§ 8031, 8034 and 8036, *supra*.

§ 8038. Surrender of Existing Lease and Lieu Lease Issued.

The owner and holder of any lease for the mining and extraction of petroleum and natural gas issued under any law heretofore existing shall have the right within ninety days after this act takes effect to surrender such lease to the commissioner of public lands and have issued to him in lieu thereof a lease under the provisions of this act upon complying with the terms hereof, in which event all unearned rental paid on the surrendered lease shall apply in full toward rental on the lease issued in lieu thereof. [L. '21, p. 572, § 4.]

§ 8039. Time Act Takes Effect.

This act shall not take effect unless and until the congress of the United States shall have passed an act consenting to and permitting the leasing of lands the title to which had passed to and vested in the state of Washington, because not known to contain deposits of minerals, oil, oil shale, or gas, at the date of the admission of the state into the Union, or

When such title is held to have otherwise attached, pursuant to the enabling act approved February 22, 1889, and acts amendatory thereof, for the development and mining of such deposits of mineral, oil, oil shale or gas, for such terms as the legislature of the state of Washington may prescribe not exceeding twenty years, and said act shall have been approved or shall become a law. [L. '21, p. 572, § 5.]

"This act" refers to §§ 8031, 8034, 8036 and 8038; until the conditions are fulfilled, the act of 1919 stands.

CHAPTER XVI.

ACQUISITION OF OYSTER LANDS.

Regulation of oyster culture: See *supra*, § 5775.

§ 8040. [6799.] Acquisition of Lands for Planting—Survey, etc.

It shall be lawful for any person who is entitled to purchase tide-lands pursuant to the act of March 26, 1890, as being an occupant of land planted with oysters, to survey or cause to be surveyed at his own expense, the land that pursuant to said act he is entitled to purchase, not exceeding one hundred acres in area: Provided, that the party making application to purchase under the provisions of this chapter shall accompany such application with the certificate under oath to the effect that lands purchased under the provisions of this chapter shall be used for oyster planting purposes only. Survey and description in duplicate of such tract shall be subject to the direction, oversight and approval of the board of state land commissioners, and one description of said tract as surveyed shall be filed with and be recorded by the county auditor of the county in which said tide-lands are situated, in a book kept by him for such especial purpose, and a duplicate description in the office of the commissioner of public lands. [L. '95, p. 36, §§ 1, 2.]

See *supra*, § 8002, oyster lands not to be leased for booming purposes.

Cited in 79 Wash. 480; 83 Wash. 74, 76; Riddell v. Brown, 25 Wash. 514, 65 Pac. 758; Anderson, In re, 95 Wash. 330, 163 Pac. 767.

Oyster Lands — Improvement, Disposal and Control: See Remington's Digest, Pub. Lands, § 101; State ex rel. Smith v. Forrest, 8 Wash. 610, 36 Pac. 686, 1120;

Private ownership of oysters. Ann. Cas. 1917B, 966.

§ 8041. [6800.] Lines of Survey—Price per Acre.

The survey of such lands, as provided in the foregoing section of this chapter, may not be required to follow the lines of United States government survey, but may follow the direction of the oyster-beds actually occupied by the party proposing to purchase the same; the persons entitled to purchase such oyster-beds under the provisions of this chapter may purchase the same at the rate of one dollar and twenty-five cents per acre, one-fourth of which price shall be paid at the time of making such purchase, and the remaining three-fourths in three equal annual payments, each of which sums shall draw interest at the rate of eight per cent per annum, the unpaid portion remaining as a lien upon said land until all payments shall be made in full, and the purchaser shall thereupon be entitled to a deed to the same; said deed shall be executed by the governor, attested by the secretary of state with the seal of the state thereunto at-

tached, which deed shall contain the conditions of defeasance in this chapter provided. [L. '95, p. 36, § 3.]

Cited in 62 Wash. 86; 79 Wash. 480; 83 Wash. 74, 76; 95 Wash. 333.

§ 8042. [6801.] Prior Right—Application to Purchase.

Any person having the right to purchase such tide lands as provided by this chapter, and being an actual occupant of the same, shall have the prior right to purchase for a period of six months from and after the passage of this act and its being signed and approved by the governor. Upon the filing of a description of the survey of such land, as provided for by the foregoing sections of this chapter, the person or persons having occupied or desiring to occupy such lands as described in section 8040, may file with the commissioner of public lands an application to purchase said lands, together with a description of the lands applied for, by metes and bounds, and upon the receipt of the same the commissioner of public lands shall, at the expense of the applicant, publish, or cause to be published, for three successive weeks in any newspaper of general circulation printed and published in the county where such lands are situated, a notice of such application to purchase, giving therein a description of lands applied for. During the next thirty days following the last publication of said notice, any person claiming a prior right to purchase such tide lands may file with the commissioner of public lands a contest for the purpose of establishing a prior right to purchase, or, upon petition of ten citizens who shall be residents of the county wherein such lands are situated, a contest may be filed as hereinbefore provided, and such contest shall be upon the right of applicant to purchase, as provided in the foregoing sections of this chapter. If the party making contest shall fail to establish a prior right to purchase, said party shall be liable for the costs resulting direct from such contest, except private attorney fees, and the sum of such costs shall be paid by such contestant into the state treasury department, and, upon such payment being made, shall be entitled to a receipt for the same. [L. '95, p. 37, §§ 4, 5.]

Cited in 79 Wash. 480; 83 Wash. 74, 76; 95 Wash. 334.

§ 8043. [6802.] Construction.

This chapter shall in no manner apply to the provisions of the act of March 26, 1890, providing for the appraisal and disposition of tide and shore lands in the state of Washington except as far as it relates to lands actually used or to be used for the purpose of oyster planting. [L. '95, p. 38, § 6.]

Cited in 79 Wash. 480; 83 Wash. 74, 76.

§ 8044. [6803.] Right to Purchase.

Any person desiring to purchase tide lands for the purposes of oyster planting may purchase tide lands of the third class not included in any natural oyster-beds or any reserve pursuant to the provisions of this chapter, in subordination to any pre-emption right confirmed by said act of March 26, 1890. Nothing in this chapter shall be construed so as to effect [affect] the preference rights of shore or upland owners, or im-

provers, as conferred by the provisions of said act or other provisions of law. [L. '95, p. 38, § 7.]

Cited in 79 Wash. 480; 83 Wash. 74, 76; 95 Wash. 335.

§ 8045. [6804.] Persons Authorized to Purchase—Abandonment.

No person shall be entitled, directly or indirectly, to the privileges of this chapter who is not an actual resident and citizen of the United States and state of Washington, and no person not a citizen of the state of Washington shall be competent to acquire deeds to any lands sold by the state under the provisions of this chapter: Provided, that any citizen of the United States and not a citizen of the state of Washington, or any corporation organized under the laws of any other state other than the state of Washington that has planted and cultivated and planted in oysters any tract or tracts or parcels of such lands for the period of five years next preceding January 1, 1895, shall have the exclusive right to purchase such tract or tracts or parcels of land so planted and cultivated as aforesaid, but not exceeding one hundred acres in the aggregate, such prior right to be within six months after the approval of this act. And failure to make application to purchase said lands within said six months by such person or corporation shall forfeit the right hereby granted to such person or corporations to purchase any such lands. If from any cause any tract or tracts, parcel or parcels of land purchased under the provisions of this chapter shall become unfit and valueless for the purposes of oyster planting, the party having so purchased and being in the possession of the same may upon certifying such fact under oath to the commissioner of public lands and to the auditor of the county wherein such lands are situated and also upon filing under oath a certificate of abandonment of such tract or tracts, parcel or parcels of land, in the office of each of said officials, such party shall then be entitled to again make purchase as hereinbefore provided; or if said land be used by the purchasers or any successors in interest of such purchaser in whole or in part for other than the purposes specified in this chapter, then upon application by any citizen to the state land commissioner such sale may be canceled, and the said land shall revert to the state and shall be subject to sale as herein provided, but not to such defaulting purchaser or such defaulting successor in interest. [L. '95, p. 38, §§ 8, 9.]

See notes to § 8040, *supra*.

Cited in 62 Wash. 85; 79 Wash. 480; 83 Wash. 74, 76; 95 Wash. 335.

Under this section the commissioner has no authority to cancel a deed upon a showing that the purchaser has failed to use the lands for the cultivation of oysters; since the power is special and its exercise limited to one cause: *State ex rel. Horan v. Savidge*, 79 Wash. 479, 140 Pac. 559.

It is not discretionary with the board of state land commissioners as to when it will entertain applications for the purchase of tide lands for oyster culture, or as to when it will dispose of such lands for that purpose, but any qualified person complying with the act has the right to purchase such lands for oyster culture, under this act, in view of this and other sections: *Anderson, In re*, 95 Wash. 330, 163 Pac. 767.

§ 8046. [6805.] Construction.

The provisions of this chapter shall not apply to such lands as have already been surveyed, appraised and platted. [L. '95, p. 39, § 10.]

Cited in 79 Wash. 480; 83 Wash. 74, 76.

§ 8047. Sale of Isolated Tracts.

That any person, firm, or corporation, now entitled to and in possession of any oyster land within the state reserves of the state of Washington, may at his, their, or its option, purchase such tract or parcel of tide land as may lay between said oyster land and the meander line of the adjoining shore, or any small or isolated tract of ground which may lay between adjoining oyster land owners by reason of the failure of the lines of said land to connect up, by complying with the provisions of this act. [L. '19, p. 486, § 1.]

§ 8048. Application to Purchase—Deed.

Any such person, firm, or corporation, may file with the commissioner of public lands an application to purchase said land from the state of Washington. Such application to be accompanied by an abstractor's certificate of title or other evidence of title demanded by the state land commissioner, to his oyster land. The commissioner shall examine such showing of title and if he finds such title to be in the applicant he shall certify such fact, together with a copy of the application, to the state oyster commission, which shall thereupon have the land applied for surveyed and platted, at the expense of the applicant, and if, after such hearing and investigation as they deem proper, they shall find the said land applied for to be of little value to the state in the future development of the state's oyster reserves, due to its size and isolation, they shall thereupon appraise the value of said land, and certify such appraisements to the commissioner of public lands. Upon the payment of the amount to the commissioners a deed shall be issued from the state of Washington to the applicant in the same manner as deeds of state, school, or granted lands, are issued; such deed to contain a covenant or condition of defeasance to the effect that if said lands be used for any purpose other than the cultivation of oysters or edible shell-fish, then such deed shall be canceled, and the said lands shall revert to the state. [L. '19, p. 486, § 2.]

§ 8049. Notice to Adjoining Owners—Division of Land.

That where the tract of land so applied for and which is not of greater area than three acres and is located between two or more oyster land owners, then upon the application of either of the adjoining owners the others shall be notified of such application and given sixty (60) days' time within which to apply for the purchase of said land; and if the said land shall be applied for and offered for sale as in this act provided, and if others of said adjoining owners have made application to purchase, the state oyster commission shall determine an equitable division of said lands between said applicants, and each shall be given the privilege of purchasing the part allotted to him, but if he fail for a period of sixty (60) days to purchase said land at the price fixed, then the other adjoining owner shall have the privilege of purchasing the whole thereof. [L. '19, p. 487, § 3.]

§ 8050. Installment Contracts.

In lieu of a deed as provided for in section 8048 hereof, a contract may be issued to the applicant by the terms of which one-fifth (1/5) of

the purchase price may be paid to the commissioner, and the remainder in four (4) equal annual payments, with interest on the deferred payments at the rate of six per cent per annum, and if such applicant shall comply with the terms of said contract and make the payments herein provided for, a deed as herein provided for shall issue to him from the state: Provided that said contract shall contain a covenant of defeasance as is provided in the case of deeds issued under the provisions of this act; provided further, that such contract shall be subject to a cancellation by the commissioner of public lands for failure to comply with its provisions, and provided further, that whenever an installment shall mature, the applicant may, if he, they, or it, so elect, pay more than one installment. [L. '19, p. 487, § 4.]

§ 8051. Disposition of Moneys.

All moneys received for the disposal of oyster lands, under the provisions of this act, shall be paid into the state oyster reserve fund. [L. '19, p. 488, § 5.]

CHAPTER XVII.

SALE OF ARTIFICIAL OYSTER-BEDS TO OCCUPIERS.

§ 8052. [6806.] Right to Purchase.

All persons having the qualifications provided by law to enable them to purchase tide lands within the state of Washington, and who, prior to March 26, 1890, in good faith entered upon tide lands not in front of any incorporated city or town, nor within two miles thereof on either side, and planted and cultivated thereon artificial oyster-beds, and who continued to occupy and work the same continuously and in good faith to March 26, 1890, and ever since said date, and who are now in possession of and working said oyster-beds in good faith, shall be permitted to purchase the same for the purpose of cultivating oysters thereon, and for no other purpose, whether said tracts were originally covered by alleged natural oyster-beds or not; and where, notwithstanding such prior occupancy and cultivation, any such tract or tracts so occupied prior to March 26, 1890, shall since such date have been reserved from sale or lease as natural oyster-beds, the person or persons or their assigns who planted, occupied and cultivated such artificial beds may, by complying with the provisions of the law touching the sale of artificial oyster-beds and paying the value thereof fixed by the state of Washington, be and they are hereby entitled to receive a deed, subject to all the provisions of this chapter, to such tract or tracts not exceeding in area of forty acres to any one person, as they so in good faith improved as such artificial oyster-beds prior to March 26, 1890. [L. '95, p. 39, § 1.]

Cited in 63 Wash. 365; 89 Wash. 66; 105 Wash. 245, 247.

Where, under this and the next section, state oyster lands are deeded for the purposes of oyster culture, with reversion to the state in case the lands are not used for that purpose, the state reserving the right to repurchase on pay-

ing for improvements, the state cannot convey the fee and reversion to a third person: *Scott v. Olympia Oyster Co.*, 63 Wash. 364, 115 Pac. 737.

Grantees of state tide lands for oyster-
ing purposes, in deeds issued under the provisions of this act, do not take fee-simple title and are not owners of tide

lands "theretofore sold or conveyed," within the meaning of section 7834, supra; a fee-simple title being essential to such preference right: *State v. Scott*, 89 Wash. 63, 154 Pac. 165.

This act authorizes the sale of natural or artificial oyster-beds to cultivators, whether planted on tide lands or lands below tide lands: *Hurley v. Olympia Oyster Co.*, 105 Wash. 244, 177 Pac. 732.

§ 8053. [6807.] Conditional Reversion to State.

It shall be expressly provided in the deed of conveyance of any such oyster-bed and the tide-land covered thereby, that said land, at the time of conveyance, is not in front of any incorporated city or town, nor within two miles thereof on either side, and that the said land is not now used for purposes of trade or commerce; that if at any time after the granting of said deed the land described therein shall cease to be used for the purposes of an artificial oyster-bed, it shall thereupon revert to, and become the property of, the state of Washington, and that the same is conveyed to the grantee only for the purposes of cultivating oysters thereon, and the state of Washington hereby reserves the right to enter upon and take possession of said tract or tracts if at any time the same is used for any other purpose than the cultivation of oysters; and the state of Washington reserves the further right to enter upon and take possession of any tidelands sold under the provisions of this and the last section, at any time when it desires, upon paying to the then owner or occupant the original purchase price of the lands together with the value of the improvements erected thereon, the then value of his artificial oyster-beds and improvements erected thereon in connection with the carrying on of the raising and propagation of oysters by artificial cultivation. [L. '95, p. 40, § 2.]

Cited in 63 Wash. 365; 89 Wash. 66; 105 Wash. 245, 247.

§ 8054. [6807-1.] Right to Purchase State's Reversionary Right.

Any person, firm or corporation now entitled to and in possession of any lands which were acquired under and by virtue of sections 8052 and 8053, may at his, their or its option, purchase additional rights in said lands by complying with the provisions of this act. [L. '15, p. 24, § 1.]

§ 8055. [6807-2.] Sale—Deed—Defeasance.

Any such person, firm or corporation, may file with the commissioner of public lands an application to purchase the reversionary right of the state of Washington in said lands, such application to be accompanied with an abstract of title to said lands. The commissioner shall examine such abstract of title, and if he finds such title to be in the applicant, he shall certify such fact, together with a copy of the application, to the state oyster commission, which shall thereupon appraise the value of the reversionary right now held by the state, and certify such appraisement to the commissioner of public lands. Upon the payment to the commissioner of the amount of such appraisement a deed shall be issued from the state of Washington to the applicant in the same manner as deeds of state school and granted lands are issued; such deed to contain a covenant or condition of defeasance to the effect that if said lands be used for any purpose other than the cultivation of oysters then such

deed shall be canceled, and the said lands shall revert to the state. [L. '15, p. 24, § 2.]

§ 8056. [6807-3.] Contracts of Sale on Installment Plan.

In lieu of a deed as provided for in section 8055, a contract may issue to the applicant, by the terms of which one-fifth of the purchase price may be paid to the commissioner, and the remainder in four equal annual installments, with interest on the deferred payments at the rate of six per cent per annum, and if such applicant shall comply with the terms of said contract and make the payments herein provided for, a deed as herein provided for shall issue to him from the state: Provided, that said contract shall contain the covenant or condition of defeasance as is provided in the case of deeds issued under the provisions of this act: Provided further, that such contract shall be subject to cancellation by the commissioner of public lands for failure to comply with its provisions: And provided further, that whenever an installment shall mature, the applicant may, if he, they or it so elect, pay more than one installment. [L. '15, p. 24, § 3.]

§ 8057. [6807-4.] State Oyster Reserve Fund.

There is hereby created a fund to be known as the "state oyster reserve fund," and all moneys received from the disposal of oysters on the reserves, or any of the products thereof, or for licenses to operate thereon, or for the sale of the rights of the state in the lands herein referred to, shall be paid into said fund, and all expenses incurred on account of said reserves shall be paid from said fund by warrants drawn thereon after appropriation by the legislature of the state. [L. '15, p. 25, § 4.]

CHAPTER XVIII.

LEASING OF LANDS FOR DEEP-WATER OYSTER CULTURE.

§ 8058. [6808.] What Lands Subject to Lease.

All lands in the waters of the state of Washington lying below extreme low tide, not covered by natural oyster-beds, and not in front of any incorporated city or town nor within two miles on either side thereof shall be subject to lease, for the purpose of planting and cultivating thereon artificial oyster-beds, under the provisions of this chapter. [L. '99, p. 272, § 1.]

See supra, § 8040, oyster land reserves.

Cited in 89 Wash. 72.

Construction of this act: See *State v. Scott*, 89 Wash. 63, 154 Pac. 165.

§ 8059. [6809.] Prior Right of Ones in Possession.

All persons who, prior to the passage of this chapter, in good faith entered upon lands not in front of any incorporated city or town, nor within two miles thereof on either side, and planted and cultivated thereon artificial oyster-beds, and who continue to occupy and work the same, and who are now in possession of and working said oyster-beds in good faith, shall have the prior right to lease for a period of six months from and after the passage of this chapter. [L. '99, p. 273, § 2.]

§ 8060. [6810.] Application—Inspection of Lands Selected by Fish Commissioner.

Applications for the lease of land for the cultivation of deep-sea oysters under the provisions of this chapter shall be made to the commissioner of public lands and shall be accompanied by a map or plat of the lands so to be leased. The commissioner of public lands shall upon receipt of such application direct the fish commissioner to immediately inspect the lands applied for and report to the commissioner of public lands his findings as to the following facts:

First. Whether the land or any portion thereof is a natural oyster-bed.

Second. Whether it be necessary in order to secure adequate protection to any natural oyster-bed to retain to the public domain the land the application for the lease of which has been made or any part thereof.

Third. Whether the land or any portion thereof having been a natural oyster-bed within ten years past may reasonably be expected to again become such within ten years in the future. [L. '99, p. 273, § 3.]

§ 8061. [6811.] Term—Rental—Hearing, When Report Adverse.

In case all of the above three questions be answered negatively, the commissioner of public lands shall immediately issue to the applicant therefor a lease for the term of twenty (20) years of the lands so applied for at an annual rental of twenty-five cents per acre. Should the fish commissioner answer one or more of the above three questions affirmatively, the commissioner of public lands shall investigate the matter at a public hearing in the county where the lands in question are situated. Due notice of such hearing shall be given by the said land commissioner by publishing a notice to that effect in some paper of general circulation in the county, at the expense of the applicant, not less than one week and not more than four weeks before the date of hearing. Unless at such hearing it be conclusively shown to the commissioner of public lands that in the matters at issue the fish commissioner was in error, he shall refuse to lease such lands or such portion thereof as may be determined by the foregoing restrictions. Application for the lease of lands thus withheld may not be made again within six years; except that the person last making application may repeat the application during the three months next preceding the expiration of the six years. [L. '99, p. 273, § 4.]

§ 8062. [6812.] Description in Application.

All applications for the lease of oyster lands under this chapter shall, in addition to the surveyor's description by metes and bounds, make description in such local geography as shall suffice to convey a knowledge of its location with reasonable accuracy to persons acquainted with the vicinity. [L. '99, p. 274, § 5.]

§ 8063. [6813.] Maximum Area—Affidavit as to Use.

All applications for lease of oyster lands under the provisions of this chapter shall be for an area not to exceed forty acres to any one person, and such application shall be accompanied by an affidavit under oath, that the party making such application leases said lands for the purpose of oyster culture only. [L. '99, p. 274, § 6.]

§ 8064. [6814.] Reversion, When Used for Foreign Purpose.

It shall be expressly provided in the lease of any such oyster land that if at any time after the granting of said lease the lands described therein shall cease to be used for the purposes of an artificial oyster-bed, it shall thereupon revert to, and become the property of the state of Washington, and that the same is leased to the lessee only for the purposes of cultivating oysters thereon, and the state of Washington hereby reserves the right to enter upon and take possession of said tract or tracts, if at any time the same is used for any other purpose than the cultivation of oysters. [L. '99, p. 274, § 7.]

§ 8065. [6815.] Application of Act.

This chapter shall in no manner apply to the provisions of any chapter heretofore enacted by the legislature of the state of Washington providing for the sale of tide and shore lands for the purpose of oyster planting and the manner of taking oysters from said tide land beds. [L. '99, p. 275, § 8.]

§ 8066. [6816.] Survey and Description in Duplicate.

Survey and description of all tracts applied for shall be in duplicate, one of which shall be filed with and be recorded by the county auditor of the county in which said lands are situated in a book kept by him for such special purpose, and a duplicate description in the office of the commissioner of public lands. [L. '99, p. 275, § 9.]

§ 8067. [6817.] Abandonment of Lease.

If from any cause any tract or tracts, parcel or parcels of land leased under the provisions of this chapter, shall become unfit and valueless for the purpose of oyster culture, the party having leased or being in possession of the same, may, upon certifying such fact under oath to the commissioner of public lands and to the auditor of the county wherein such lands are situated, also upon filing under oath a certificate of abandonment of such tract or tracts, parcel or parcels of land, in the office of each of said officials, such party shall then be entitled to lease other lands as hereinbefore provided. [L. '99, p. 275, § 10.]

§ 8068. [6818.] Dredging for Purpose of Discovery.

The fish commissioner of the state of Washington may and he is hereby authorized to dredge or permit others to dredge in all the waters of the state of Washington for the purpose of discovering whether any particular waters, not already reserved, leased or appropriated under existing laws, or the provisions of this chapter, contain oysters in a natural state, and regulate the taking thereof, under such rules as the fish commissioner may prescribe. [L. '99, p. 275, § 11.]

CHAPTER XIX.

SALE OF JEFFERSON COUNTY OYSTER LAND RESERVES.

§ 8069. [6819.] Resurvey and Appraisement—Classification.

The state oyster commission is hereby authorized and directed to cause a resurvey and appraisement of the state oyster land reserves of Jefferson county, and to file plats thereof in the manner now provided by law, and to indicate thereupon all such portions thereof as are natural oyster-beds, which shall be classified as first class. [L. '07, p. 455, § 1.]

See supra, § 8040, oyster land reserves.

§ 8070. [6820.] Application to Purchase Other than First Class—Sale at Auction.

After the survey, appraisement and filing of the plat as hereinbefore provided for, and upon application of any person or persons, for purchase of any portion of the said lands, other than first class, the said state oyster commission shall cause notice thereof to be given in the manner now provided by law, for the sale of other tide lands, and at the time and place designated in said notice, shall proceed to sell the same at public auction, to the highest bidder, the same not to be sold at less than the appraised value: Provided, that not more than fifty acres shall be sold to any one individual or corporation: And provided, further, that payment may be made for said land in cash, or upon the following terms, to wit: One-tenth cash to be paid at the time of sale, and the balance of the purchase price in deferred payments of nine equal annual payments, with interest on all deferred payments, at the rate of six per cent per annum. [L. '07, p. 455, § 2.]

§ 8071. [6821.] Act Concurrent.

Nothing in this chapter contained shall change, modify or repeal any existing provisions of the general law relating to the sale and use of tide lands for the culture of oysters or other shell-fish, but shall be additional thereto and concurrent therewith, and all sales of tide lands made hereunder for the purpose of the culture of oysters or other shell-fish shall be subject to like conditions and reversions prescribed by existing laws for similar lands sold for like purposes. [L. '07, p. 456, § 3.]

§ 8072. [6822.] Appropriation—Reimbursement of General Fund.

For the purpose of carrying out the provisions of this chapter, the sum of two thousand dollars, or so much thereof as may be necessary is hereby appropriated from the general fund of the state: Provided, however, that from the proceeds of the sale of any such lands, the amount appropriated or so much thereof as may be used, for the purposes hereinbefore provided, shall be reimbursed to the state general fund, and thereafter fifty per cent of the amount received from the sales of any such lands shall be paid into the state general fund and fifty per cent shall be paid into a fund to be used for the improvement, protection and supervision of the state oyster reserves. [L. '07, p. 456, § 4.]

CHAPTER XX.

TRESPASS ON PUBLIC LANDS.

§ 8073. [6823.] Removing Valuable Material, Penalty.

Any person, firm, corporation or association cutting or removing, or causing to be cut or removed, any timber growing or being upon the state, school or granted lands, or manufacturing the same into logs, bolts, shingles, lumber or other articles for domestic use or commerce, shall be liable to the state of Washington in treble the value of the timber or other articles so cut or removed, to be recovered in a civil action; and moreover, shall forfeit all interest in and to the article into which said timber is manufactured. [L. '95, p. 570, § 101; L. '97, p. 261, § 66.]

Compare, § 8074, *infra*.

See *supra*, § 7806, prosecution of trespassers.

§ 8074. [6824.] Penalty for Injuries to Public Lands.

If any person shall cut down, destroy, injure, or cause to be cut down, destroyed or injured, any timber standing, growing or felled upon any of the lands of the state of Washington before deed shall have been issued by the state therefor as provided by law, or shall take or remove or cause to be taken or removed from any such lands, any timber, wood, clay, sand or other material or substance thereon, or shall dig, quarry, take or remove any mineral (except by contract with the state), earth or stone from such lands, or shall cause to be dug, quarried, taken or removed any mineral (except by contract with the state), earth or stone from such lands, or shall otherwise injure, deface or damage, or shall cause to be injured, defaced or damaged any such lands, he shall be deemed guilty of a misdemeanor. [L. '99, p. 47, § 1. Cf. L. '95, p. 549, § 51; L. '97, p. 247, § 38.]

Compare § 8073, *supra*.

See *supra*, § 2659, subd. 1, injury to trees on state land.

See *supra*, § 7806, duty to prosecute.

§ 8075. [6825.] Timber for Domestic Use—Clearing.

Nothing in this act shall be so construed as to prevent any person who shall lease said lands or hold the same under contract with the state for the purchase thereof, and occupy the same for the purpose of a home, from cutting such timber as may be necessary for domestic use or to clear land for actual cultivation: Provided, that such lessee or contractor may sell such timber so cut in good faith for the purpose of clearing such land for cultivation: Provided further, however, that before any timber may be sold by any such lessee or contractor he must first obtain the written consent of the commissioner of public lands of the state of Washington to such sale; otherwise such lessee or contractor shall not have the benefit of the provisions of this section. [L. '99, p. 48, § 2.]

"Act" refers to §§ 8074—8076.

§ 8076. [6826.] Penalties for Violations.

Any person or persons violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a

fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail of the county in which such conviction was had, for a time not less than one month and not more than one year, or by both fine and imprisonment. [L. '99, p. 48, § 3.]

"Act" refers to §§ 8074—8076.

§ 8077. [6827.] Injury to Capitol Grant Lands—Penalty.

If any person shall cut down, destroy or injure any tree standing or growing upon any of the lands granted to the state of Washington, for erecting public buildings at the capital of said state before patent shall have been issued by the state therefor as herein provided, or shall take or remove from any such lands any timber or wood, or shall dig, quarry, take or remove any mineral, earth or stone from such lands, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year; or by fine not less than fifty nor more than one thousand dollars, or both: Provided, that nothing in this section shall be so construed so as to prevent any purchaser who shall purchase said land for purposes of a home from cutting such timber as may be necessary for domestic use, or to clear land for actual cultivation. [L. '93, p. 188, § 10.]

"This section" substituted for "this act," the balance of which is now obsolete.

See notes, to § 8074.

CHAPTER XXI.

RIGHT TO OVERFLOW STATE LANDS FOR CERTAIN PURPOSES.

§ 8078. [6828.] For What Purposes Privilege Granted.

The board of state land commissioners is authorized to grant any person or corporation the right, privilege, power and authority to perpetually back and hold water upon and over any land belonging to the state of Washington, and to overflow any such land and inundate the same, if said board deems it necessary for the purpose of erecting, constructing, maintaining or operating any water-power plant, reservoir or works for impounding water for power purposes, irrigation, mining or other public use. [L. '15, p. 416, § 10. Cf. L. '07, p. 233, § 1.]

See supra, § 4255, diking district, right to overflow state lands.

Cited in 75 Wash. 118; 99 Wash. 498, 499; 102 Wash. 292.

The state has power to confer by this section, upon the board of state land commissioners, the power to grant to a private individual the right to overflow state lands for the purpose of power plants for irrigation, mining, or other public use: State ex rel. Mason County Power Co. v. Superior Court, 99 Wash. 496, 169 Pac. 994.

The commissioners have the power and it is their duty to appraise the damages

not only to the fee, but also to the improvements of a lessee from the state although the statute does not expressly provide for appraisal of improvements: State ex rel. Washington Water Power Co. v. Savidge, 75 Wash. 116, 134 Pac. 680.

This section is not repealed by § 7354, supra, of the Water Code, giving the right to condemn for the beneficial use of water as a public use: State ex rel. Mason County P. Co. v. Superior Court, 102 Wash. 291, 173 Pac. 19.

§ 8079. [6829.] Application for Privilege.

The right, privilege, power and authority herein given and granted by said board of state land commissioners shall not be exercised or en-

joyed until the amount of damages appraised and fixed by said board shall have been paid by the person or corporation to whom such right is granted: Provided, that if the construction or erection of any such water-power plant, reservoir or works for impounding water for the purposes as heretofore specified shall not be commenced and be diligently prosecuted and completed within such time as the board may prescribe at the time of such right, privilege, power and authority is granted, the same may be forfeited by the board of state land commissioners by serving written notice of such forfeiture upon the person or corporation to whom the same is granted. Such forfeiture shall become effective upon the service of said notice: Provided, further, that said board may extend the time within which such work shall be completed if the said board deems it necessary. [L. '15, p. 416, § 11. Cf. L. '07, p. 233, § 2.]

§ 8080. [6830.] Damages.

When and as soon as said damages are so fixed and assessed by the board of state land commissioners, the same shall be paid to said officer. [L. '07, p. 233, § 3.]

Cited in 75 Wash. 118.

CHAPTER XXII.

RIGHT OF WAY OVER PUBLIC LANDS.

For waterways, see *infra*, §§ 9608, 9731.

For Lake Washington Canal, see *infra*, § 8121.

§ 8081. [6831.*] Logging Right of Way.

Any person, corporation or association engaged in the business of logging and lumbering shall have a right of way over public lands when necessary, for the purpose of hauling or removing timber or ties from other lands. Before, however, any such right of way grant shall become effective, a written application for and a plat showing the location of such right of way, with reference to the adjoining lands, shall be filed with the board of state land commissioners, and all timber on said right of way, together with the damages to said land, shall be appraised by said board and paid for in cash by the person, corporation or association applying for such right of way. The board of state land commissioners shall then cause to be issued in duplicate to such person, corporation or association a right of way certificate setting forth the conditions and terms upon which such right of way is granted. Whenever said right of way shall cease to be used, for a period of two years, for the purpose for which it was granted, it shall be deemed forfeited, and said right of way certificate shall contain such a provision: Provided, that any rights of way for logging purposes heretofore issued which have never been used, or have ceased to be used, for a period of two years, for the purpose of which they were granted, shall be deemed forfeited and shall be canceled upon the records in the office of the commissioner of public lands. One copy of each certificate shall be filed in the office of the commissioner of public lands and one copy delivered to the applicant. The forfeiture of said right of way, as herein provided, shall be rendered effective by the mailing of a notice of such forfeiture

to the grantee thereof to his last known postoffice address and by stamping the copy of said certificate in the office of the commissioner of public lands canceled and the date of such cancellation. For the issuance of such certificate the same fee shall be charged as provided in the case of certificates for railroad rights of way. [L. '21, p. 169, § 1; L. '15, p. 417, § 12. Cf. L. '95, p. 547, § 45; L. '97, p. 246, § 34.]

§ 8082. [6831-1.] Reservation of Logging Rights of Way—Condemnation.

All state lands hereafter granted, sold or leased containing timber, stone, mineral or other products or when other state lands contiguous or in proximity thereto contain valuable timber, stone, mineral or other products, shall be subject to the right of the state, or any grantee or lessee thereof hereafter acquiring such other lands, or acquiring the timber, stone, mineral or other products thereon, to acquire the right of way over such lands so granted, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of and to be used in the transportation and moving of such timber, stone, mineral or other products from such other lands, over and across the lands so granted or leased, upon the state or its grantee paying to the owner of the lands so granted, sold or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property. [L. '11, p. 506, § 1.]

Cited in 108 Wash. 672.

§ 8083. [6831-2.] Subject to Right of State—Railroad Commission to Control.

Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other products of the land, shall be subject to the right of the state or any grantee thereof or other person owning or hereafter acquiring any lands containing valuable timber, stone, mineral or other products contiguous to or in proximity thereto, or hereafter acquiring the timber, stone, mineral or other product situate upon state lands so contiguous or in close proximity to the said lands, over which said right of way or easement is acquired having such timber, stone, mineral or other product transported or moved over such railroad, skid road, flume, canal, watercourse or other easement after the same is or has been put in operation upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the railroad commission of Washington. [L. '11, p. 507, § 2.]

See *infra*, § 10783, duties of railroad commission devolve upon director of public works.

See *infra*, § 10893, public service commission abolished.

§ 8084. [6831-3.] Right to Transport—Charges.

Any person, firm or corporation hereafter acquiring the right of way or other easement over state lands or over any tide or shore land belonging to the state or over or across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral or other products, and engaged in such business thereon, shall accord to the state or any grantee thereof hereafter acquiring lands containing valuable timber, stone, mineral or other products contiguous and in proximity thereto, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other products situate upon the state lands so contiguous and in proximity to the lands over which said right of way or easement is operated, proper and reasonable facilities and service for the transportation and moving of such timber, stone, mineral and other products under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use to have the right to use such right of way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor. [L. '11, p. 507, § 3.]

§ 8085. [6831-4.] Appeal to Commission—Order.

Should the owner or operator of any private line of railroad, skid road, flume, canal, watercourse or other easement operating over lands hereafter acquired from the state, as in this act set out, fail to agree with the state or with any subsequent grantee thereof as to the reasonable and proper rules, regulations and charges concerning the transportation of timber, stone, mineral or other products, from lands contiguous or in proximity of the lands over which the right of way or easement is granted, for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse or other easement in transporting such product, the state or such person, firm or corporation owning and desiring to ship such products may apply to the railroad commission and have the reasonableness of the rules, regulations and charges inquired into and it shall be the duty of the railroad commission to inquire into the same in the same manner and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules and regulations and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such railroad, skid road, flume, canal, watercourse or other easement is not then in use may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad. [L. '11, p. 508, § 4.]

See *infra*, § 10783, duties of railroad commission devolve upon director of public works.

See *infra*, § 10893, public service commission abolished.

§ 8086. [6831-5.] Penalty—Rights Revert to State.

In case any person, firm or corporation owning and operating any private railroad, skid road, flume, canal, watercourse or other easement over and across lands hereafter acquired from the state obtained subject to the provisions of this act shall fail to comply with any rule, regulation or order made by the railroad commission after an inquiry as provided for in the preceding section, such person, firm or corporation shall be subject to a penalty not exceeding one thousand dollars for each and every violation thereof, and in addition thereto such right of way, railroad, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right of way and connected therewith, shall revert to the state of Washington and may be recovered by it in an action instituted in any court of competent jurisdiction. [L. '11, p. 509, § 5.]

§ 8087. [6832.] Public Road Right of Way.

Rights of way may be granted by the board of state land commissioners over public lands to any county or city desiring to construct a public road across the same: Provided, that a duly attested and sworn copy of the official plat, made by the official county or city surveyor or engineer, shall first be filed with the board, together with a petition from the county or city officials setting forth the reason for the same, and the aforesaid plat, when approved by said board of appraisers, shall be and form the official plat of said road, and the said plat shall show the amount of land taken up by the proposed road, and shall show the remainder of land in each portion of each legal subdivision bisected by said proposed road, and said plat shall be retained in the office of the commissioner of public lands: Provided further, that all timber on said right of way shall be appraised and paid for in cash by the said county or city. [L. '95, p. 547, § 46; L. '97, p. 246, § 35.]

Cited in 39 Wash. 276.

§ 8088. [6833.] Railroad Right of Way.

A right of way through, over and across the public lands of the state of Washington, except tide lands, harbor areas and shore lands, is hereby granted to any railroad company duly organized under the laws of any state or by the congress of the United States to any extent not exceeding fifty feet on each side of the center line of said railroad now constructed or hereafter to be constructed unless a greater width is required for excavations, embankments, depot, station grounds, passing tracks or barrow pits, which extra width shall not in any case exceed two hundred feet on either side of said center way: Provided this act shall not apply to any lands acquired or used by any of the public institutions of this state. In order to obtain the benefits of this grant as to any railroad hereafter to be constructed, the company constructing or proposing to construct such road shall file with the board of state land commissioners a copy of its articles of incorporation, due proofs of organization thereunder, a map or maps accompanied by the field-notes of the survey and location of the line of said railroad, and shall pay to the state as hereinafter provided the amount of the appraised

value of said lands affected by, used for or included within said right of way and extra widths if any are required. In order to obtain the benefits of this grant as to any railroad now constructed, the company owning such road shall file with the board of state land commissioners a list of the lands affected by, used or included within such right of way, and shall pay to the state as hereinafter provided the amount of the appraised value of said lands affected by, used for or included within said right of way and extra widths. [L. '01, p. 353, § 1; L. '07, p. 201, § 1.]

"Act" in this section refers to §§ 8088—8094.

See *infra*, §§ 10538, 10539, right of eminent domain by railroads.

Cited in 75 Wash. 119.

§ 8089. [6834.] Classification and Appraisal.

All lands of this state over which a right of way of any railroad company may now or hereafter be located shall be classified and appraised as hereinafter provided, and the state board of land commissioners shall constitute and serve as the board of appraisers mentioned in section 2 of Article XVI of the Constitution of this state. [L. '01, p. 353, § 2.]

See, also, § 7797.

§ 8090. [6835.] Same—Price Fixed.

Upon the filing of said list or maps by said company as herein provided, said board of state land commissioners are hereby authorized and directed to ascertain and classify the lands affected by, to be used for and included within the aforesaid right of way, and shall thereupon fix the price per acre for each lot, or block, quarter section and subdivision thereof, less the improvements, if any, so affected by, used for and included within said right of way, which price shall be the full market value thereof but not to be less than ten dollars per acre. [L. '01, p. 354, § 3.]

§ 8091. [6836.] Improvements, Separate Appraisal of.

Should any improvements made as of right and with license from the state of Washington be upon any of such lands at the time of said appraisalment, the board of state land commissioners shall separately appraise the same together with the damage and waste done to said lands, by the use and occupancy of the same or to adjacent lands and after deducting from the amount of appraisalment for improvements the amount of such damage and waste the balance shall be determined and regarded as the value of said improvements, and the railroad company if not the owner of such improvements shall deposit with the commissioner of public lands the value of the same as shown by said appraisalment within thirty days next following the date thereof. The commissioner of public lands shall hold such moneys for the period of three months, and unless a demand and proof of the ownership of such improvements shall be made to the commissioner of public lands within said period of three months the same shall be deemed forfeited

to the state and deposited with the state treasurer and paid into the general fund of the state. If two or more persons shall, within said period of three months, file claims of the ownership of the said improvements with the commissioner of public lands, the commissioner shall hold such moneys until a certified copy of a judgment decreeing the ownership of said improvements shall be filed with him. When a certified copy of a judgment has been so filed with the commissioner of public lands, he shall pay to the owner thereof, as decreed by said judgment, the appraised value of said improvements. Where said right of way affects the improvements of any person other than the person owning improvements on said right of way or entitled thereto under existing law the applicant for said right of way shall file with the commissioner of public lands a valid release of damages duly executed by such owner or owners, or a certified copy of a judgment of a court of competent jurisdiction showing that the damages resulting to such owner or owners, ascertained in accordance with existing law, has been made or paid into the registry of such court. [L. '15, p. 418, § 13. Cf. L. '01, p. 354, § 4.]

Cited in 75 Wash. 119.

§ 8092. [6837.] Record of Appraisement—Certificate—Notice.

When said appraisement is made it shall be recorded in the proceedings of said board of state land commissioners and the evidence or report upon which the same is based shall be preserved of record in the office of the board of state land commissioners and the commissioner of public lands shall prepare a certificate of said appraisement in duplicate, one of which he shall file in his office and the other transmit to the auditor of the county in which the lands affected by said rights of way are located; and shall send a notice to the railroad company availing itself of the provisions of this act that such appraisement has been made. The board of county commissioners of any county where the said right of way is situate shall be forthwith served with notice of appraisement. A copy of said appraisement shall be forthwith filed with the board of county commissioners of any county in which the land is situated. [L. '01, p. 355, § 5.]

“Act” in this section refers to §§ 8088—8094.

§ 8093. [6838.] Appeal from Appraisement.

Within thirty days after the appraisement of said lands, as aforesaid, the board of county commissioners of any county in which the right of way is situate, or any person, company or corporation may appeal from the same to the superior court of the county in which the right of way affected by the appeal is situate; but if the applicant is the party appealing, he or it must deposit the amount of the appraisement in the registry of the court to which the appeal is taken. All appeals shall be heard and determined by the court de novo. The taking of an appeal shall not prevent the use of the land affected thereby for right of way purposes during the prosecution of the appeal. All costs on appeal shall be paid by the applicant. [L. '01, p. 355, § 6.]

See supra, §§ 7808—7814, appeals from board of state land commissioners.

§ 8094. [6839.] Easement Appurtenant to Land.

Upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by said right of way shall be subject to the easements obtained under the provisions of this act: Provided, however, that before any such easement shall become effective a right of way certificate shall be issued to said railway company by the commissioner of public lands, in which the terms and conditions of such easement shall be set forth and the lands covered thereby described. Such certificate shall be in such form as the commissioner of public lands may prescribe. [L. '15, p. 419, § 14; L. '01, p. 355, § 7.]

"Act" in this section refers to §§ 8088—8094.

§ 8095. [6840.] University Lands—Right of Way to Railroads and Street Railways.

Any railroad company now having in operation a line of railroads, or branches, sidings, or spurs thereof, upon any property in this state in use by the University of Washington for university purposes, or as a part of the grounds set aside or devoted to university purposes, may have such right of way confirmed to it, its successors and assigns, upon the following terms and conditions: Such railroad company shall file with the board of regents of said university a plat showing the right of way desired, and shall file a duplicate thereof with the commissioner of public lands; and any railroad company or street-car company desiring hereafter to construct a railroad or street-car line, or extensions thereof, with branches, sidings, or spurs, upon any property in this state in use by the University of Washington for university purposes, or as a part of the ground set aside or devoted to university purposes, may have such right of way confirmed to it, its successors and assigns, upon the following terms and conditions: Such railroad company or street-car company shall file with the board of regents of said university a plat showing the right of way desired, and shall file a duplicate thereof with the commissioner of public lands. [L. '09, p. 888, § 1.]

§ 8096. [6841.] Conditions of Grant—Agreement With Board of Regents.

The board of regents of said University of Washington are authorized, upon the filing of such plat with it, to agree in writing with any such railroad company or street-car company, upon the boundaries and the extent of such right of way, the manner in which the same shall be maintained and fenced and occupied, and prescribe the number, character, and maintenance of crossings, cross-overs, and subways, and as to what sum said railroad company or street-car company shall pay for the right of way granted. [L. '09, p. 889, § 2.]

§ 8097. [6842.] Deed of Right of Way.

If such agreement is entered into, said board of regents shall transmit a certified copy thereof to the commissioner of public lands, who shall, after the full amount of money provided in such agreement shall be paid by said railroad company or street-car company to the state treasurer, issue to such railroad company or street-car company, in the name

of the state of Washington, a deed for the right of way described in such agreement, which said deed shall recite and be subject to all the terms and conditions of such agreement, and certified copies of said deed shall be filed, one in the office of the commissioner of public lands, and the other with the secretary of said board of regents. [L. '09, p. 889, § 3.]

§ 8098. [6843.] Deed Conveys Easement, Only.

The conveyance herein provided for shall not be deemed to convey the fee to the land described, but an easement only thereover and for railroad or street-car purposes only, and when the right of way granted as aforesaid shall not be used for the purposes for which it was granted, then and thereupon the easement right shall immediately become void. [L. '09, p. 889, § 4.]

§ 8099. [6844.*] Irrigation Ditches—Rights of Way Granted.

A right of way through, over and across the public lands of the state of Washington is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association or individual, constructing or proposing to construct an irrigation ditch or pipe-line for irrigation, or to any diking and drainage district or any diking and drainage improvement district constructing or proposing to construct a dike or drainage ditch. [L. '17, p. 604, § 6. Cf. L. '07, p. 353, § 1.]

See supra, § 4253, for diking districts.

See supra, § 7956, for irrigating canals.

Cited in 93 Wash. 391.

This section has no application to a ditch already constructed for waters ap-

propriated before the passage of the act: Colburn v. Winchell, 93 Wash. 388, 160 Pac. 1052.

§ 8100. [6845.*] Benefits of Grant—Procedure to Obtain.

In order to obtain the benefits of this grant, the irrigation district, irrigation company, association or individual constructing or proposing to construct such irrigation ditch or pipe-line for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the board of state land commissioners a map accompanied by the field-notes of the survey and location of the proposed irrigation ditch or dike or drainage ditch and shall pay to the state as hereinafter provided, the amount of the appraised value of the said lands used for or included within said right of way. The land within said right of way shall be limited to an amount necessary for the construction of a ditch or dike sufficient for the purposes required, together with sufficient land on either side thereof for egress and ingress to maintain and repair the same. [L. '17, p. 604, § 7; L. '07, p. 353, § 2.]

§ 8101. [6846.] Appraisal.

Upon the filing of the plat and field-notes as herein provided, said board of state land commissioners are hereby authorized and directed to ascertain the value of the land to be used for or included within said

right of way, which price shall be the full market value thereof, but not to be less than ten dollars per acre. [L. '07, p. 353, § 3.]

§ 8102. [6847.] Easement Appurtenant.

Upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by such right of way shall be subject to the easement obtained under the provisions of this act. [L. '07, p. 353, § 4.]

"Act" in this section refers to §§ 8099—8102.

§ 8103. [6848.*] Municipal Corporations, Electric Light, Power, etc., Companies.

A right of way through, over and across the public lands of the state of Washington is hereby granted to any municipal or private corporation, company, association or individual, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume or pipe-line for the domestic water supply of any municipality, or transmission line for the purpose of generating or transmitting electricity for light, heat or power. [L. '21, p. 556, § 1; L. '19, p. 232, § 1; L. '09, p. 654, § 1.]

Cited in 75 Wash. 119.

§ 8104. [6849.*] Procedure to Obtain Right of Way—Width.

In order to obtain the benefits of this grant, such municipal or private corporation, company, association or individuals constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipe-line or transmission line, shall file with the board of state land commissioners a map, accompanied by the field-notes of the survey and location of such telephone line, ditch, flume, pipe-line, or transmission line, and shall pay to the state as hereinafter provided the amount of the appraised value of said lands and improvements, if any, used for or included within said right of way. The land within said right of way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipe-line, or transmission line sufficient for the purpose required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and shall include the right to cut all standing timber within a radius of two hundred feet on either side of said telephone line, ditch, flume, pipe-line, or transmission line, which shall be dangerous to the operation and maintenance of the same. [L. '21, p. 557, § 2; L. '19, p. 232, § 2; L. '09, p. 655, § 2.]

§ 8105. [6850.] Appraisal.

Upon the filing of the plat and field-notes as herein provided, said board of state land commissioners are hereby authorized and directed to ascertain the value of the land and improvements, if any, to be used for or included in said right of way and the value of all merchantable timber so cut, or to be cut, all of which shall be the full value thereof. [L. '09, p. 655, § 3.]

Cited in 75 Wash. 119.

§ 8106. [6851.] Future Grants Subject to Easement—Reversion.

Upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by such right of way shall be subject to the easement obtained under the provisions of this act: Provided, however, that should the company, association or individual securing said easement ever abandon same for the purposes contemplated in this act the said right of way shall revert to the state. [L. '09, p. 655, § 4.]

"Act" in this section refers to §§ 8103—8107.

§ 8107. [6852.*] Act Cumulative.

Nothing contained in the four preceding sections shall be deemed to in any way conflict with any existing laws of this state relating to the methods of acquiring rights of way for ditches, flumes, pipe-lines, transmission lines or telephone lines for the purposes therein specified. [L. '19, p. 233, § 3; L. '09, p. 656, § 5.]

"Act" in this section refers to §§ 8103—8107.

CHAPTER XXIII.**RIGHTS CEDED THE UNITED STATES.****§ 8108. [6853.] Consent to Acquisition of Certain Rights by United States, etc.**

The consent of the state of Washington be and the same is hereby given to the acquisition by purchase or by condemnation, under the laws of this state relating to the appropriation of private property to public uses, by the United States of America, or under the authority of the same, of any tract, piece, or parcel of land, from any individual or individuals, bodies politic or corporate, within the boundaries or limits of this state, for the sites of locks, dams, piers, breakwaters, keepers' dwellings, and other necessary structures and purposes required in the improvement of the rivers and harbors of this state, or bordering thereon, or for the sites of forts, magazines, arsenals, docks, navy-yards, naval stations, or other needful buildings authorized by any act of congress, and all deeds, conveyances of title papers for the same shall be recorded as in other cases, upon the land records of the county in which the land so acquired may lie; and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tract or tracts, legal divisions or subdivisions of any public land belonging to the United States which may be set apart by the general government for any or either of the purposes before mentioned by an order, patent, or other official document or papers describing such lands; the consent herein and hereby given being in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of congress in such cases made and provided; and the jurisdiction of this state is hereby ceded to the United States of America over all such land or lands as may have been or may be hereafter acquired by purchase or by condemnation, or set apart by the general government for any or either of the purposes before mentioned: Provided, that this

state shall retain a concurrent jurisdiction with the United States in and over all tracts so acquired or set apart as aforesaid, so far as that all civil and criminal process that may issue under the authority of this state against any person or persons charged with crimes committed, or for any cause of action or suit accruing without the bounds of any such tract, may be executed therein, in the same manner and with like effect as though this assent and cession had not been granted. [L. '90, p. 459, § 1; 1 H. C., § 2947; L. '91, p. 31, § 1; 1 H. C., § 2948.]

Cited in 33 Wash. 338; 109 Wash. 49.

§ 8109. [6854.] State Lands so Acquired are Exempt from Taxation.

The tracts, pieces, or parcels of land so acquired or set apart, together with the tenements and appurtenances for the purposes before mentioned, shall be held exempt from taxation by the state of Washington. [L. '91, p. 32, § 2; 1 H. C., § 2949.]

Cited in 109 Wash. 49.

§ 8110. [6854½.] Jurisdiction Over Rainier National Park.

Exclusive jurisdiction shall be, and the same is hereby ceded to the United States over and within all the territory that is now or may hereafter be included in that tract of land in the state of Washington, set aside for the purposes of a national park, and known as the Rainier National Park; saving, however, to the said state, the right to serve civil and criminal process within the limits of the aforesaid park, in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said park; and saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said park: Provided, however, this jurisdiction shall not vest until the United States through the proper officer, notifies the governor of this state that they assume police or military jurisdiction over said park. [L. '01, p. 192, § 1.]

§ 8111. [6855.] Right of United States Surveyors to Enter upon Premises.

Any person employed in the execution of any survey authorized by the congress of the United States may enter upon any land within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any work which may be necessary to carry out the object of existing laws, and may establish permanent station marks, and erect the necessary signals and temporary observations, doing no unnecessary injury thereby. [Cf. L. '58, p. 24, § 1; L. '69, p. 413, § 1; L. '88, p. 214, § 1; 1 H. C., § 2950.]

§ 8112. [6856.] Proceedings Where Such Surveyors Cause Damage.

If the parties interested cannot agree upon the amount to be paid as damages caused thereby, either of them may petition the superior court of the county in which the land so entered upon is situated, which court shall appoint a time for a hearing as soon as may be, and order at least fourteen days' notice to be given to all parties interested, and with or without a view of the premises, as the court may determine, hear the

parties and their witnesses, and assess the damages, if any there be. [Cf. L. '58, p. 24, § 2; L. '69, p. 413, § 2; L. '88, p. 214, § 2; 1 H. C., § 2951.]

See Const., Art. I, § 16, and notes.

§ 8113. [6857.] Damages and Costs, Recovery of.

The person or persons so entering upon land may tender to the injured party damages therefor, and in case of appeal or application to said superior court the damages finally assessed do not exceed the amount so tendered, the person so entering shall recover costs, otherwise the prevailing party shall recover costs. [L. '58, p. 24, § 4. Cf. L. '69, p. 414, § 4; L. '88, p. 214, § 3; 1 H. C., § 2952.]

The "appeal" referred to has no application to present organization of courts.

§ 8114. [6858.] Costs to be the Same as Now Allowed by Law.

The costs to be allowed in such cases shall be the same as and governed by the fees and costs in said court as now allowed by law. [Cf. L. '69, p. 414, § 5; L. '88, p. 214, § 4; 1 H. C., § 2953.]

§ 8115. [6859.] Damages for Injuring Property of Geodetic Survey.

If any person or persons shall willfully deface, injure, or remove any signal monument, building, or other property of the United States coast and geodetic survey, constructed or used under and by virtue of any of the acts of the congress of the United States, he or they shall forfeit a sum not exceeding fifty dollars for each offense, and shall be liable for [any] and all damages sustained by the United States in consequence of such defacing, injury, or removal, to be recovered in any court of competent jurisdiction. [L. '88, p. 214, § 5. Cf. L. '58, p. 25, § 6; L. '69, p. 415, § 6; 1 H. C., § 2954.]

See, also, supra, §§ 2706, 2707.

§ 8116. [6860.] Use of Tide Lands Granted to United States—Limitations.

The use of any tide and shore lands belonging to the state of Washington, and adjoining and bordering on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the government of the United States, for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock-yards, navy-yards, prisons, penitentiaries, lighthouses, fog-signal stations, or other aids to navigation, be and the same is hereby granted to the United States, so long as the upland adjoining such tide or shore lands shall continue to be held by the government of the United States for any of the public purposes above mentioned: Provided, that this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent the citizens of the state of Washington from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States: And provided further, that whenever the government of the United States shall cease to

hold for public purposes any such tract, piece or parcel of land, the use of the tide and shore lands bordering thereon shall revert to the state of Washington. [L. '90, p. 428, § 1; 1 H. C., § 2181; L. '09, p. 390, § 1.]

Former laws cited in 11 Wash. 231; 33 Wash. 386.

§ 8117. [6861.] Application by United States to Land Commissioners—Deed by Governor.

Whenever application is made to the board of state land commissioners by any department of the United States government for the use of any tide or shore lands belonging to the state of Washington and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in section 8116 upon proof being made to said board that such uplands are so held by the United States for such purposes, it shall cause said fact to be entered in the minutes of its meetings, and the commissioner of public lands shall certify such fact to the governor and he shall issue a deed, which shall be attested by the secretary of state, conveying the use of such lands, for said purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining said tide and shore lands. [L. '09, p. 390, § 2.]

§ 8118. [6862.] Use of Tide and Shore Lands by United States—Grant of Easement.

Whenever application is made to the board of state land commissioners, by any department of the United States government, for the use of any tide or shore lands belonging to the state of Washington for any public purpose, and said board shall be satisfied that the United States requires or may require the use of such tide or shore lands for such public purpose, said board may reserve such tide or shore lands from public sale and grant the use of them to the United States, so long as it may require the use of them for such public purpose; and the commissioner of public lands of the state of Washington shall certify such fact to the governor, who shall thereupon execute an easement to the United States, which shall be attested by the secretary of state, granting the use of such tide or shore lands to the United States, so long as it shall require the use of them for said public purpose. [L. '09, p. 391, § 3.]

§ 8119. [6863.] Reversion.

Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in this act, the said easement shall be terminated thereby and said tide and shore lands shall revert to the state without resort to any court or tribunal whatsoever. [L. '09, p. 391, § 4.]

"Act" in this section refers to §§ 8116—8119.

§ 8120. [6864.] Right to Construct Lake Washington Ship Canal.

In aid of the construction, maintenance and operation of a ship canal, by the United States of America, to connect the waters of Lake Union and Washington, in King county, with Puget Sound, together with all

necessary and convenient locks, landways, spillways, buildings, power plant and other proper appurtenances, there be and hereby is granted by this state to said United States the right to place, construct, maintain, and operate, such ship canal, landways, spillways, buildings, power plant and other proper appurtenances, upon, along, through and over any and all lands belonging to and waters of this state in said King county, within such limits as shall be defined by the plans and specifications for such improvement as the same shall be approved by the United States secretary of war, and the right to raise the waters of Salmon Bay and the right to lower the waters of Lake Washington, in prosecution of such improvement, and this state hereby releases the United States from all liability to damages to this state, its successors or assigns, that shall or might arise from such lowering or raising of waters, or otherwise from such improvement. But nothing in this section contained shall operate as an assumption of nor create any liability on the part of the state, for any damages which may result to any person, company or corporation. [L. '01, p. 7, § 1.]

Cited in 58 Wash. 519; 63 Wash. 462; 76 Wash. 172.

This section was not intended to convey the fee of leased lands, in view of Laws of 1897, page 243, prohibiting their sale: *State ex rel. Bussell v. Callvert*, 33 Wash. 380, 74 Pac. 573.

Even if the fee in tide lands was granted by the state to the United States by this section, it would be subject to a prior state lease, and the commissioner of public lands could not exonerate himself from accepting rent by his arbitrary and illegal act of canceling the lease: *State ex rel. Bussell v. Callvert*, 33 Wash. 380, 74 Pac. 573.

This section was not intended to annul existing leases of state tide lands made by the state to private parties, since such an attempt would be unconstitu-

tional: *State ex rel. Bussell v. Callvert*, 33 Wash. 380, 74 Pac. 573.

The fact that an act authorizes the exercise of the state's eminent domain for the purpose of constructing a ship canal which shall be under the control of the general government, but for the use and benefit of the public generally, will not render the act unconstitutional, when there is no express constitutional provision prohibiting it: *Lancey v. King County*, 15 Wash. 9, 45 Pac. 645, 34 L. R. A. 817.

State deeds of shore lands on Lake Washington subsequent to the enactment of this section will be presumed to be made in the light of that act and with intent to include all lands up to the line of navigability after the lake had been lowered: *State v. Sturtevant*, 76 Wash. 158, 135 Pac. 1035, 138 Pac. 650.

§ 8121. [6865.] Same—Right of Way.

A right of way of not exceeding five hundred (500) feet in width is hereby granted to the United States of America through any lands or shore lands belonging to the state of Washington, or to the University of Washington, and lying in King county between Lakes Union and Washington, or in or adjoining either of them, the southern boundary of such right of way on the upland to be coincident with the southern boundary of the lands now occupied by the University of Washington adjacent to the present right of way of said canal; the width and definite location of such right of way before the same is taken possession of by said United States shall be plainly and completely platted and a plat thereof approved by the secretary of war of the United States filed in the office of the state land commissioner: Provided, that nothing in this section contained shall be construed to repeal or impair any right, interest, privilege or grant expressed or intended in the preceding section. [L. '07, p. 498, § 1.]

Cited in 58 Wash. 521.

§ 8122. State Grants to United States for War Emergencies.

Whereas, on account of the recent emergencies of war it was necessary that the United States be permitted to go upon the lands of the state of Washington and build railroads thereon and remove timber therefrom; and whereas there was no authority in law for the state of Washington to grant such rights to the United States; all action heretofore taken by the board of state land commissioners and the commissioner of public lands in permitting such acts by the United States is hereby ratified and confirmed, and the commissioner of public lands is hereby authorized to grant to the United States such rights of way over and across the lands of the state, including tide and shore lands, as may be made necessary by the military necessities of the present war; and the consent of the state of Washington is hereby given to the United States, upon the termination of the present war, to transfer such easements to such persons, firms, or corporations as it may desire. [L. '19, p. 105, § 1.]

§ 8123. Extent of Grant.

The said rights of way shall be of such width or widths as shall appear to the commissioner of public lands to be necessary, together with such additional lands as are required for excavations, embankments, depot and station grounds, passing tracks, or borrow pits. [L. '19, p. 106, § 2.]

§ 8124. Maps and Field-notes to be Filed—Payment for Land and Timber.

In order to obtain the benefits of this grant the United States shall file with the commissioner of public lands a map or maps of the rights of way desired, together with the field-notes of the survey thereof, and shall pay to the state the amount of the appraised value of the lands affected by, used for, or included within the said rights of way and extra widths, together with the appraised value of the timber thereon. [L. '19, p. 106, § 3.]

CHAPTER XXIV.

LOCAL ASSESSMENTS AGAINST STATE LANDS.

§ 8125. State Lands Benefited by Local Improvements—Leased and Contracted Lands.

That all lands, including school lands, granted lands, escheated lands, tide lands, shore lands, or other lands, (including harbor areas lying between tide or shore lands and outer harbor line) held or owned by the state of Washington in fee simple (in trust or otherwise), situated within the limits of any incorporated city, town, diking, drainage, or port district in this state, may be assessed and charged for the cost of local improvements specially benefiting such lands which may be ordered by the proper authorities of any such city, town, diking, drainage, or port district: Provided, that the leasehold, contractual or possessory interest of any person, firm, association, private or municipal corporation in any such lands shall be charged and assessed in the proportional amount such leasehold, contractual or possessory interest is benefited: Provided, further, that the interest of the state in such property shall not be sold to satisfy

the lien of such assessment, but only such interest or contract or other right therein as may be in private ownership shall be subject to such sale. [L. '19, p. 479, § 1. Cf. L. '09, p. 598, § 4; L. '05, p. 267, § 2.]

See supra, §§ 4478—4482, assessment of state lands for dikes and drains.

Cited in 93 Wash. 477.

Assessment of State Lands for Local Improvements: See Remington's Digest, Mun. Corp., § 209; Coast Land Co. v. Seattle, 52 Wash. 380, 100 Pac. 856; Trimble v. Seattle, 64 Wash. 102, 116 Pac. 647; Spokane v. Fonnell, 75 Wash. 417, 135 Pac. 211; North American Lumber Co. v. Blaine, 81 Wash. 13, 142 Pac. 438; Western Avenue, In re, 93 Wash. 472, 161 Pac. 381.

The legislature could not, by Rem. & Bal. Code, § 6872, sanction special assessments for local improvements against harbor areas located and reserved in the navigable waters of a lake: State ex rel. Seattle v. Savidge, 95 Wash. 240, 163 Pac. 738.

State property as subject to special assessment. 16 Ann. Cas. 887; Ann. Cas. 1917D, 845; 23 L. R. A. 807.

§ 8126. Charging State for Local Improvements.

In all local improvement assessment districts in any incorporated city, town, diking, drainage or port district in this state, property in such district, held or owned by the state shall be assessed and charged for its proportion of the cost of such local improvements in the same manner as other property in such district, it being the intention of this act that the state shall bear its just and equitable proportion of the cost of local improvements specially benefiting state lands: Provided, that none of the provisions of this act shall have the effect, or be construed to have the effect, to alter or modify in any particular any existing lease of any lands or property owned by the state, or release or discharge any lessee of any such lands or property from any of the obligations, covenants or conditions of the contract under which any such lands or property are leased or held by any such lessee. [L. '19, p. 479, § 2; L. '09, p. 798, § 5. Cf. L. '05, p. 268, § 3.]

Cited in 110 Wash. 108.

Under this section, a reassessment against state property may include ac-

rued interest: Reassessment Second School Addition, In re, 110 Wash. 104, 187 Pac. 1092.

§ 8127. Apportioning Cost on Leaseholds.

Where state lands are under lease, the proportionate amounts to be assessed against the leasehold interest, and the fee simple interest of the state, shall be fixed with reference to the life of the improvement and the period for which said lease has yet to run. [L. '19, p. 480, § 3.]

§ 8128. Notice to State of Intention to Improve—Consent.

Notice of the intention to make such improvement, together with the estimate of the amount to be charged to each lot, tract or parcel of land, or other property owned by the state to be assessed for said improvement, shall be forwarded by registered mail to the commissioner of public lands, or to the state board of control (if such lands are occupied by, or used in connection with, any state institution), at least fifteen (15) days prior to the date fixed for hearing on the resolution or petition initiating said improvement, as provided by sections 9360 and 9361. Such city, town, diking, drainage or port district, shall not have jurisdiction to order such improvements as to the interest of the state in harbor areas and state tide

lands until the written consent of the commissioner of public lands to the making of such improvement shall have been obtained, unless other means be provided for paying that portion of the cost which would otherwise be levied on the interest of the state of Washington in and to said tide lands, and nothing herein shall prevent the city from assessing the proportionate cost of said improvement against any leasehold, contractual or possessory interest in and to any tide land or harbor area owned by the state: Provided, however, that in the case of tide lands and harbor areas within the boundaries of any port district, notice of intention to make such improvement shall also be forwarded to the commissioners of said port district. [L. '19, p. 480, § 4.]

§ 8129. Certifying Roll to State Officials—Legislative Appropriation—Penalty and Interest.

Upon the approval and confirmation of the assessment-roll for any local improvement ordered by the proper authorities of any incorporated city, town, diking, drainage or port district, the treasurer of such city, town, diking, drainage or port district shall certify and forward to the commissioner of public lands, or to the state board of control (if such lands are occupied by, or used in connection with, any state institution), a statement of all the lots or parcels of land held or owned by the state and charged on such assessment-roll for the cost of such improvement, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case said land has been leased; the commissioner of public land shall charge against each such lot or parcel of land owned or held by the state, the amount of the local assessment so certified by such treasurer, and shall then certify said statement to the state auditor; and the state board of control shall cause a proper record to be made in its office of the cost of such improvement upon lands occupied by state institutions or used in connection therewith, and shall certify said statement to the state auditor, and the state auditor, at the next session of the legislature, shall certify to the legislature the amount of all local improvement assessments charged against such lands of the state, and the legislature shall provide for the payment of the same, with interest, by appropriation out of the general fund of the state: Provided, that if said improvement is essential to harbor and waterfront development and improvement, such appropriation may be deducted from the proceeds of rents received from leases of harbor areas and tide lands within port districts wherein the improvement is to be made; and provided further that no penalty shall be provided or enforced against the state, and no interest on the assessment levied to pay for said improvement greater than six per cent (6%) per annum shall be taxed to, or allowed by, the state for or on account of making such improvement. [L. '19, p. 481, § 5; L. '09, p. 598, § 6. Cf. L. '05, p. 268, § 4.]

Cited in 93 Wash. 479; 110 Wash. 106, 109.

§ 8130. Liens Against Contractual Interests.

When any city, town, diking, drainage or port district has made or caused to be made an assessment against such leasehold, contractual or

possessory interest for any such local improvement, the treasurer of said city, town, diking, drainage or port district shall immediately give notice to the commissioner of public lands or to the state board of control (if such lands are occupied by or used in connection with any state institution); said assessment shall become a lien against the leasehold, contractual or possessory interest in the same manner as the assessments on other property, and its collection may be enforced against such interests as provided by law for the enforcement of other local improvement assessments: Provided, that said assessment shall not be made payable in installments unless the owner of such leasehold, contractual or possessory interest shall first file with such treasurer a satisfactory bond guaranteeing the payment of such installments as they become due. [L. '19, p. 482, § 6; L. '09, p. 596, § 1. Cf. L. '05, p. 267, § 1; L. '07, p. 123, § 1.]

Cited in 52 Wash. 381—384; 95 Wash. 245.

§ 8131. Foreclosure of Liens—Cancellation of Leases and Contracts—Delinquent Leaseholds in Port Districts.

Whenever any city, town, diking, drainage or port district shall have foreclosed the lien of any such delinquent assessments, as provided by law, and shall have obtained title to such leasehold, contractual or possessory interest, the commissioner of public lands, or the state board of control, as the case may be, shall be notified by registered mail of such action and furnished a statement of all assessments against such leasehold, contractual or possessory interest, and such commissioner shall cause the amount of such assessments to be certified to the legislature for payment, and upon the receipt of an assignment from such city, town, diking, drainage, or port district, shall cancel such lease or contract: Provided, however, that unless the municipal corporation making said local improvement and levying said special assessment shall have used due diligence in the foreclosure thereof, the commissioner of public lands or the state board of control shall not be required to make such certification for a sum in excess of what they deem to be the special benefits accruing to the state's reversionary interest in said property; and provided further that if such delinquent assessment or installment shall be against a leasehold interest in tide lands or harbor areas in a port district, the said commissioner of public lands shall notify the commissioners of said port district of the receipt of such assignment, and said commissioners shall forthwith cancel such lease. [L. '19, p. 483, § 7.]

§ 8132. Payment by State After Reversion.

If by reason of default in the payment of rentals or installments, or other causes, the state shall cancel any lease or contract against which assessments have been levied as herein provided, the commissioner of public lands and the state auditor shall cause such assessments or installments as shall fall due subsequent to the cancellation of said contract or leasehold interest to be properly certified to the legislature for payment, the same as if the assessments or installments thereof had been levied on the state's interest in said lands. [L. '19, p. 483, § 8.]

§ 8133. Assessments Added to Sale Price of State Lands.

When any land, other than lands occupied and used in connection with state institutions, owned or held by the state within incorporated cities, towns, diking, drainage or port districts in this state, against which local improvement assessments have been paid, as herein provided for, is offered for sale, there shall be added to the appraised value of such land, as provided by law, such portion of the local improvement assessment paid by the state as shall be deemed to represent the value added to such lands by such improvement for the purpose of sale, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land, in addition to the amounts otherwise due to the state for said land, and no deed shall ever be executed until such local improvement assessments have been paid, and nothing herein shall be construed as canceling any unpaid assessments on the land so sold by the state, but such land shall be sold subject to all assessments unpaid at the time of sale. [L. '19, p. 484, § 9; L. '09, p. 600, § 7. Cf. L. '05, p. 268, § 5.]

§ 8134. Assignment of Contractual Interest.

Whenever any such tide, state, school, granted or other lands situated within the limits of any city, town, diking, drainage or port district, has been included within any local improvement district by such city, town, diking, drainage or port district, and the contract, leasehold or other interest of any individual has been sold to satisfy the lien of such assessment for local improvement, the purchaser of such interest at such sale shall be entitled to receive from the state of Washington, on demand, an assignment of the contract, leasehold or other interest purchased by him, and shall assume, subject to the terms and conditions of the contract or lease, the payment to the state of the amount of the balance which his predecessor in interest was obligated to pay. [L. '19, p. 484, § 10; L. '07, p. 123, § 2; L. '09, p. 601, § 10.]

§ 8135. Application of Act.

The provisions of this act shall apply to all municipal corporations, diking, drainage and port districts, any charter or ordinance provisions to the contrary notwithstanding. [L. '19, p. 485, § 11; L. '09, p. 600, § 8. Cf. L. '05, p. 269, § 6.]

§ 8136. Eminent Domain Assessments.

The provisions of this act shall apply to all local improvements initiated after the taking effect of this act, including assessments to pay the cost and expense of taking and damaging property by the power of eminent domain, as provided by law: Provided, that in case of eminent domain assessments, it shall not be necessary to forward to the commissioner of public lands or to the state board of control, as the case may be, notice of the intention to make such improvement, but the eminent domain commissioners, authorized to make such assessment, shall, at the time of filing the assessment-roll with the court in the manner provided by law, forward by registered mail to the commissioner of public lands or to the state board of control (if such lands are occupied by or used in connection

with any state institution) a notice of such assessment, and of the day fixed by the court for the hearing thereof: Provided, that no assessment against the state's interest in tide-lands or harbor areas shall be binding against the state if the commissioner of public lands shall file a disapproval of the same in court before judgment confirming the roll. [L. '19, p. 485, § 12.]

Land Titles. Registration, see § 10622.

Lawyers. See § 118.

Leases. See "Real Property," § 10618.

LEGISLATURE.

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CHAPTER I.

APPORTIONMENT.

§ 8137. [6883.] Apportionment of Senators.

The state shall be divided into forty-two single senatorial districts, and said districts shall be constituted and numbered as follows:

The counties of Okanogan, Ferry, Grant, and Douglas shall constitute the first senatorial district and be entitled to one senator.

The county of Stevens shall constitute the second senatorial district and shall be entitled to one senator.

The following portion of the city of Spokane, to wit, the precincts of Adams, Delaware, Eldorado and Eureka, together with the following precinct in the county of Spokane, to wit, Bell precinct, shall constitute the third senatorial district and be entitled to one senator.

The following precincts in the county of Spokane, to wit, Bridge, Fairfield, Latah, Little Hangman, McCoy, Mica, Mt. Hope, Moran, Nosler, Peone, Pleasant Prairie, Richland, Rockford and Saltese, and all that portion of the city of Spokane, in said county, lying south of Riverside Avenue and east of Division Street, in said city, shall constitute the fourth senatorial district and be entitled to one senator.

The following precincts of the county of Spokane, to wit, Abernethy, Beaver, Buckeye, Chattaroy, Cheney, Coulee, Deep Creek, Deer Park, Fancher, Five Mile, Graves, Indian Prairie, Marshall, Mayer, Medical Lake, Mount Carlton, Rock Creek, Rock Lake, Silver Lake, Spangle, Spurgeon, Spring Valley, Stevens, Truitt, Waverly and Wells, shall constitute the fifth senatorial district and be entitled to one senator.

The following portion of the city of Spokane, to wit, the precincts of Belmont, Blaine, Bernard, Beacon, Blake, Burton, Butler, Brown, Burke and Brickell, shall constitute the sixth senatorial district and be entitled to one senator.

The following portion of the city of Spokane, to wit, the precincts of Cleveland, Cass, Carlisle, Cannon, Carleton, Clay, Damon and Douglas, shall constitute the seventh senatorial district and be entitled to one senator.

All that part of Whitman county except sections 1, 2 and 3, of township 17 north, range 43 E., W. M., shall constitute the eighth senatorial district and be entitled to one senator.

Sections 1, 2 and 3, of township 17 north, range 43 E., W. M., in Whitman county, shall constitute the ninth senatorial district, and be entitled to one senator.

The counties of Asotin, Garfield and Columbia shall constitute the tenth senatorial district and be entitled to one senator.

The counties of Adams, Franklin, and the third and fourth wards of the city of Walla Walla, and the precincts of Wallula, Frenchtown, Lower Touchet, Hadley, Eureka, Hill, Baker, Lower Dry Creek, Prescott, Mullen, Fremont, Steptoe, Whitman and Clyde, of Walla Walla county, shall constitute the eleventh senatorial district and be entitled to one senator.

The first and second wards of the city of Walla Walla, and the precincts of Waitsburg, Coppie, Russell Creek, Mill Creek, Washington, Small, Dixie, Clarke, Lewis, Sims, Stevens and Ritz, of Walla Walla county, shall constitute the twelfth senatorial district and be entitled to one senator.

The counties of Kittitas and Chelan shall constitute the thirteenth senatorial district and be entitled to one senator.

The county of Lincoln shall constitute the fourteenth senatorial district and be entitled to one senator.

The counties of Yakima and Benton shall constitute the fifteenth senatorial district and be entitled to one senator.

The counties of Klickitat and Skamania shall constitute the sixteenth senatorial district and be entitled to one senator.

The county of Clarke shall constitute the seventeenth senatorial district and be entitled to one senator.

The county of Cowlitz shall constitute the eighteenth senatorial district and be entitled to one senator.

The counties of Wahkiakum and Pacific shall constitute the nineteenth senatorial district and be entitled to one senator.

The county of Lewis shall constitute the twentieth senatorial district and be entitled to one senator.

The county of Chehalis shall constitute the twenty-first senatorial district and be entitled to one senator.

The county of Thurston shall constitute the twenty-second senatorial district and be entitled to one senator.

The counties of Mason, Kitsap and Island shall constitute the twenty-third senatorial district and be entitled to one senator.

The counties of Clallam, Jefferson and San Juan shall constitute the twenty-fourth senatorial district and be entitled to one senator.

The following precincts in the county of Pierce, to wit: Alderton, Brecken; Buckley, first and second precinct; Burnett, Carbonado, Deringer, Earl, Edgewood, Fairfax, Kapowsin, Lake Tapps, Larchmont, Melmont, Milton, Midland, McMillan, Orting; Puyallup, first, second and third wards; Reservation, Rhodes Lake, Soldiers' Home, South Orting, South Prairie, Sumner, Wilkeson, first and eighth precincts of the fourth ward in the city of Tacoma, shall constitute the twenty-fifth senatorial district and be entitled to one senator.

The following precincts in the county of Pierce, to wit, Alder, Anderson Island, Artondale, Elbe, Fox Island, Gig Harbor, Hillhurst, Holz, Lake Bay, Lake City, Lakeview, Long Branch, McNeils Island, McKenna, Minter, Muck, Nisqually, Ohop, Purdy, Rosedale, Roy, Silver Lake, Smelter, Spanaway, Steilacoom, Tanwax, Vaughan, and the following precincts and wards in the city of Tacoma: First, second, third, fourth, fifth, sixth and seventh precincts of the first ward; the first, tenth and eleventh precincts of the second ward, and the first, second and third precincts of the eighth ward, shall constitute the twenty-sixth senatorial district and be entitled to one senator.

The following precincts in the city of Tacoma, in the county of Pierce, to wit: The second, third, fourth, fifth, sixth, seventh, eighth and ninth precincts of the second ward; the twelfth, thirteenth and fourteenth precincts of the third ward; and the first and fifth precincts of the seventh ward, shall constitute the twenty-seventh senatorial district and be entitled to one senator.

The following precincts of the city of Tacoma, in the county of Pierce, to wit: The first, second, third, fourth, fifth, sixth and seventh precincts of the third ward; the second, third, fourth, fifth, sixth, seventh, ninth, tenth, eleventh and twelfth precincts of the fourth ward, shall constitute the twenty-eighth senatorial district and be entitled to one senator.

The following precincts in the county of Pierce, to wit: Fern Hill, Hunt's Prairie, Parkland, and the following precincts in the city of Tacoma: Eighth, ninth, tenth and eleventh precincts of the third ward; first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh precincts of the fifth ward; and the first, second, third, fourth, fifth and sixth precincts of the sixth ward; and the second, third and fourth precincts of the seventh ward, shall constitute the twenty-ninth senatorial district and be entitled to one senator.

The following precincts of the county of King, to wit, Orillia, White River, Des Moines, Vashon, Chatauqua, Maury, Burton, Spring Brook, Suise Creek, Meeker, Kent, Star Lake, Buenna, Christopher, Valley, Auburn, Adelaide, Stuck, Green River, Meridian, Wabash, Osceola, Boise, Enumelaw, Birch, Krain, Cumberland, Palmer, Durham, Franklin, Black Diamond, Eagle Gorge, Webster, Hot Springs and Lester, shall constitute the thirtieth senatorial district and be entitled to one senator.

The following precincts of the county of King, to wit, West Seattle, South Park, Mt. View, Sunnysdale, Columbia, Dunlap, Duwamish, Black River, Sprague, Renton, Newcastle, Squak, Mercer, Gilman, Cedar Mountain, Arthur, Sherwood, Preston, Falls City, North Bend, Snoqualmie, Albin, Tolt, Vincent, Novelty, Cherry Valley, Stossel, Martin Creek, Wellington and Baring shall constitute the thirty-first senatorial district and be entitled to one senator.

The following precincts of the county of King, to wit, Yesler, Oak Lake, Richmond, Union, Samamish, Juanita, Kirkland, Houghton, Bellevue, Monohan, Redmond, Avondale, Woodinville, Ballard, including all of the town of Ballard, and the following precincts in the city of Seattle, in said county, to wit, all of the ninth ward [as constituted in 1909], shall constitute the thirty-second senatorial district and be entitled to one senator.

The following precincts and wards of the city of Seattle, in the county of King, to wit, the third, fifth, sixth and seventh precincts of the first ward, and all of the second ward, shall constitute the thirty-third senatorial district and be entitled to one senator.

The following precincts and wards of the city of Seattle, in the county of King, to wit, all of the fourth ward and the first, second and fourth precincts of the first ward, shall constitute the thirty-fourth senatorial district and be entitled to one senator.

The following portion of the city of Seattle, in the county of King, to wit, all of the fifth ward in said city, and that portion of the seventh ward bounded as follows: Beginning at the intersection of Minor Avenue and Madison Street, and running thence easterly on Madison Street to Broadway; thence north on Broadway to East Pine Street; thence west on East Pine Street to Bellevue Avenue; thence north on Bellevue Avenue to East Denny Way; thence west on East Denny Way and Denny Way to Westlake Avenue; thence south on Westlake Avenue to Ninth Avenue; thence southerly on Ninth Avenue to Olive Street; thence easterly on Olive Street to Minor Avenue; thence southerly on Minor Avenue to the place of beginning, shall constitute the thirty-fifth senatorial district and be entitled to one senator.

The following wards of the city of Seattle, in the county of King, to wit, the sixth and eighth wards [eighth ward as constituted in 1909] of said city, constitute the thirty-sixth senatorial district and be entitled to one senator.

The following portion of the city of Seattle, in the county of King, to wit, all of the third ward, and all that portion of the eleventh ward not included in the thirty-fifth senatorial district, herein described, shall constitute the thirty-seventh senatorial district and be entitled to one senator.

The following precincts in the county of Snohomish, to wit, Allen, Bear Creek, Beecher Lake, Edmonds, Fernwood, Lowell, McDonald, Marsh, Mukilteo, South Snohomish, Whaleback, Centerville, Tualco, Sultan River, Wallace, and all of the city of Everett, shall constitute the thirty-eighth senatorial district and be entitled to one senator.

The following portion of the county of Snohomish, to wit, all that portion of said county not included in the thirty-eighth senatorial district, herein described, shall constitute the thirty-ninth senatorial district and be entitled to one senator.

The county of Skagit shall constitute the fortieth senatorial district and be entitled to one senator.

All of the county of Whatcom, except the territory included in the city limits of New Whatcom and Fairhaven, shall constitute the forty-first senatorial district and be entitled to one senator.

The portion of the county of Whatcom included in the city limits of New Whatcom and Fairhaven, shall constitute the forty-second senatorial district and be entitled to one senator. [L. '01, p. 79, § 1; L. '05, p. 189, § 15; L. '09, p. 23, § 11; L. '09, p. 387, § 1; L. '09, pp. 638, 639, §§ 1—5; L. '09, p. 654, § 1; L. '09, Ex. Sess., pp. 64, 65, § 1—5.]

See Const., Art. II, § 2, number of members.

Const., Art. II, § 3, seems to authorize reapportionments only after a federal or state census, to be taken every five years.

See Const., Art. II, § 7, qualifications of legislators.

See Const., Art. II, §§ 13, 14, limitations on members accepting other offices.

See *infra*, § 8154, vacancies, how filled.

§ 8138. [6885.] Apportionment of Representatives.

The state shall be divided into fifty-eight representative districts, and said districts shall be constituted and numbered as follows:

The county of Stevens shall constitute the first representative district and be entitled to two representatives.

The following portion of the city of Spokane, to wit, Adams, Delaware, Eldorado and Eureka precincts, together with Bell precinct in the county of Spokane, shall constitute the second representative district and be entitled to two representatives.

The following precincts in the county of Spokane, to wit, Bridge, Fairfield, Latah, Little Hangman, McCoy, Mica, Mt. Hope, Moran, Nosler, Peone, Pleasant Prairie, Richland, Rockford and Saltese and all that portion of the city of Spokane in said county lying south of Riverside Avenue, and east of Division Street, in said city, shall constitute the third representative district and be entitled to two representatives.

The following precincts of the county of Spokane, to wit, Abernethy, Beaver, Buckeye, Chattaroy, Cheney, Coulee, Deep Creek, Deer Park, Fancher, Five Mile, Graves, Indian Prairie, Marshall, Mayer, Medical Lake, Mount Carlton, Rock Creek, Rock Lake, Silver Lake, Spangle, Spurgeon, Spring Valley, Stevens, Truitt, Waverly and Wells, shall constitute the fourth representative district and be entitled to two representatives.

The following portion of the city of Spokane, to wit, Belmont, Blaine, Bernard, Beacon, Blake, Burton, Butler, Browne, Burke and Brickell precincts, shall constitute the fifth representative district and be entitled to two representatives.

The following portion of the city of Spokane, to wit, Cleveland, Cass, Carlisle, Cannon, Carleton, Clay, Damon and Douglas precincts, shall constitute the sixth representative district and be entitled to two representatives.

All that part of Whitman county except sections 1, 2 and 3, of township 17, north, range 43, E., W. M., shall constitute the seventh representative district and be entitled to two representatives.

Sections 1, 2 and 3, of township 17 north, range 43, E., W. M., in Whitman county, shall constitute the eighth representative district, and be entitled to two representatives.

The county of Asotin shall constitute the ninth representative district and be entitled to one representative.

The county of Garfield shall constitute the tenth representative district and be entitled to one representative.

The county of Columbia shall constitute the eleventh representative district and be entitled to one representative.

The following precincts of the county of Walla Walla, to wit, the third and fourth wards of the city of Walla Walla, and the following precincts in said county: Wallula, Frenchtown, Lower Touchet, Hadley, Eureka, Hill, Baker, Lower Dry Creek, Prescott, Mullen, Fremont, Steptoe, Whitman and Clyde, shall constitute the twelfth representative district and be entitled to one representative.

The following precincts of the county of Walla Walla, to wit, the first and second wards of the city of Walla Walla, and the precincts of Waitsburg, Coppie, Russell Creek, Washington, Mill Creek, Small, Dixie, Clarke, Lewis, Sims, Stevens and Ritz of the county of Walla Walla, shall constitute the thirteenth representative district and be entitled to two representatives.

The county of Franklin shall constitute the fourteenth representative district and be entitled to one representative.

The county of Adams shall constitute the fifteenth representative district and be entitled to one representative.

The county of Lincoln shall constitute the sixteenth representative district and be entitled to two representatives.

The county of Okanogan shall constitute the seventeenth representative district and be entitled to one representative.

The county of Douglas shall constitute the eighteenth representative district and be entitled to one representative.

The county of Kittitas shall constitute the nineteenth representative district and be entitled to two representatives.

The county of Yakima shall constitute the twentieth representative district and be entitled to two representatives.

The county of Klickitat shall constitute the twenty-first representative district and be entitled to one representative.

The county of Skamania shall constitute the twenty-second representative district and be entitled to one representative.

The county of Clarke shall constitute the twenty-third representative district and be entitled to two representatives.

The county of Cowlitz shall constitute the twenty-fourth representative district and be entitled to one representative.

The county of Wahkiakum shall constitute the twenty-fifth representative district and be entitled to one representative.

The county of Pacific shall constitute the twenty-sixth representative district and be entitled to one representative.

The county of Lewis shall constitute the twenty-seventh representative district and be entitled to three representatives.

The county of Thurston shall constitute the twenty-eighth representative district and be entitled to two representatives.

The following precincts of Chehalis county, to wit, Aberdeen, East Aberdeen, Cosmopolis, Montesano, East Montesano, Summit, Arctic, Connie, Elma, Oakville, Satsop, Porter, Big Canyon, Deering, Neushka, Wynooche, North River, Fords Prairie, Grove, Grand Forks, Black House and Wilson shall constitute the twenty-ninth representative district and be entitled to two representatives.

The following portion of the county of Chehalis, to wit, the first and second wards of the city of Hoquiam, and the following precincts, Queets, Quinalt, Chehalis, Westport, Ocosta, John's River, London, Gray's Harbor, and Humptulips, shall constitute the thirtieth representative district and be entitled to one representative.

The county of Mason shall constitute the thirty-first representative district and be entitled to one representative.

The county of Kitsap shall constitute the thirty-second representative district and be entitled to one representative.

The county of Jefferson shall constitute the thirty-third representative district and be entitled to two representatives.

The county of Clallam shall constitute the thirty-fourth representative district and be entitled to one representative.

The following precincts in the county of Pierce, to wit: Alderton, Brecken, Buckley, first and second precinct; Burnett, Carbonado, Dieringer, Earl, Edgewood, Fairfax, Kapowsin, Lake Taps, Larchmont, Melmont, Milton, Midland, McMillan, Orting, Puyallup first, second and third wards; Reservation, Rhodes Lake, Soldiers' Home; South Orting, South Prairie, Sumner, Wilkeson, first and eighth precincts of the fourth ward in the city of Tacoma, shall constitute the thirty-fifth representative district, and be entitled to two representatives.

The following precincts in the county of Pierce, to wit: Alder, Anderson Island, Artondale, Elbe, Fox Island, Gig Harbor, Hillhurst, Holtz, Lake Bay, Lake City, Lakeview, Long Ranch, McNeil's Island, McKenna, Minter, Muck, Nisqually, Ohop, Purdy, Rosedale, Roy, Silver Lake, Smelter, Spanaway, Steilacoom, Tanwax, Vaughan, and the following precincts and wards in the city of Tacoma: First, second, third, fourth, fifth, sixth and seventh precincts of the first ward; the first, tenth, and eleventh precincts of the second ward, and the first, second and third precincts of the eighth ward, shall constitute the thirty-sixth representative district, and be entitled to two representatives.

The following precincts in the city of Tacoma, in the county of Pierce, to wit: The second, third, fourth, fifth, sixth, seventh, eighth and ninth precincts of the second ward; the twelfth, thirteenth and fourteenth precincts of the third ward, and the first and fifth precincts of the seventh ward, shall constitute the thirty-seventh representative district, and be entitled to two representatives.

The following precincts of the city of Tacoma, in the county of Pierce, to wit: The first, second, third, fourth, fifth, sixth and seventh precincts of the third ward; the second, third, fourth, fifth, sixth, seventh, ninth, tenth, eleventh and twelfth precincts of the fourth ward, shall constitute the thirty-eighth representative district, and be entitled to two representatives.

The following precincts in the county of Pierce, to wit: Fern Hill, Hunt's Prairie, Parkland, and the following precincts in the city of Tacoma: Eighth, ninth, tenth and eleventh precincts of the third ward; first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh precincts of the fifth ward; and the first, second, third, fourth, fifth and sixth precincts of the sixth ward; and the second, third and fourth precincts of the seventh ward, shall constitute the thirty-ninth representative district, and be entitled to two representatives.

The following precincts of the county of King, to wit, Orillia, White River, Des Moines, Vashon, Chataqua, Maury, Burton, Spring Brook, Suise Creek, Meeker, Kent, Star Lake, Buenna, Christopher, Valley, Auburn, Adelaide, Stuck, Green River, Meridian, Wabash, Osceola, Boise, Enumclaw, Birch, Krain, Cumberland, Palmer, Durham, Franklin, Black

Diamond, Eagle Gorge, Webster, Hot Springs, and Lester, shall constitute the fortieth representative district and be entitled to three representatives.

The following precincts of the county of King, to wit, West Seattle, South Park, Mt. View, Sunnydale, Columbia, Dunlap, Duwamish, Black River, Sprague, Renton, Newcastle, Squak, Mercer, Gilman, Cedar Mountain, Arthur, Sherwood, Preston, Falls City, North Bend, Snoqualmie, Albin, Tolt, Vincent, Novelty, Cherry Valley, Stossel, Martin Creek, Wellington and Baring, shall constitute the forty-first representative district and be entitled to two representatives.

The following precincts of the county of King, to wit, Yesler, Oak Lake, Richmond, Union, Samamish, Juanita, Kirkland, Houghton, Bellevue, Monohan, Redmond, Avondale, Woodinville, Ballard, including all of the town of Ballard, and the following precincts in the city of Seattle, in said county, [all] of the ninth ward [as constituted in 1909], shall constitute the forty-second representative district and be entitled to two representatives.

The following precincts and wards of the city of Seattle, in the county of King, to wit, the third, fifth, sixth and seventh precincts of the first ward, and all of the second ward, shall constitute the forty-third representative district and be entitled to two representatives.

The following precincts and wards of the city of Seattle, in the county of King, to wit, all of the fourth ward, and the first, second and fourth precincts of the first ward shall constitute the forty-fourth representative district and be entitled to one representative.

The following portion of the city of Seattle, in the county of King, to wit, all of the fifth ward in said city, and that portion of the seventh ward bounded and described as follows: Beginning at the intersection of Minor Avenue and Madison Street, and running thence easterly on said Madison Street to Broadway; thence north on Broadway to East Pine Street; thence west on East Pine Street to Bellevue Avenue; thence north on Bellevue Avenue to East Denny Way; thence west on East Denny Way and Denny Way to Westlake Avenue; thence south on Westlake Avenue to Ninth Avenue; thence southerly on Ninth Avenue to Olive Street; thence easterly on Olive Street to Minor Avenue; thence southerly on Minor Avenue to place of beginning, shall constitute the forty-fifth representative district, and be entitled to two representatives.

The following wards of the city of Seattle, in the county of King, to wit, the sixth and eighth wards [eighth ward as constituted in 1909] of said city, shall constitute the forty-sixth representative district and be entitled to two representatives.

The following portions of the city of Seattle, in the county of King, to wit, all of the third ward and all that portion of the seventh ward not included in the forty-fifth representative district, herein described, shall constitute the forty-seventh representative district and be entitled to two representatives.

The following precincts of the county of Snohomish, to wit, Allen, Bear Creek, Beecher Lake, Edmunds, Fernwood, Lowell, McDonald, March, Muckilteo, South Snohomish, Whaleback, Centerville, Tualco,

Sultan River, Wallace, and all the city of Everett, shall constitute the forty-eighth representative district and be entitled to two representatives.

All of the county of Snohomish not included in the forty-eighth representative district shall constitute the forty-ninth representative district and be entitled to two representatives.

The county of Island shall constitute the fiftieth representative district and be entitled to one representative.

The county of Skagit shall constitute the fifty-first representative district and be entitled to three representatives.

The county of San Juan shall constitute the fifty-second representative district and shall be entitled to one representative.

All of the county of Whatcom, outside of the city of Bellingham, shall constitute the fifty-third representative district and be entitled to two representatives.

The territory of the county of Whatcom, included within the city of Bellingham shall constitute the fifty-fourth representative district and be entitled to two representatives.

The county of Ferry shall constitute the fifty-fifth representative district and be entitled to one representative.

The county of Chelan shall constitute the fifty-sixth representative district and be entitled to one representative.

The county of Benton shall constitute the fifty-eighth [fifty-seventh] representative district and be entitled to one representative.

The county of Grant shall constitute the fifty-ninth [fifty-eighth] representative district and shall be entitled to one representative. [L. '01, p. 85, § 2; L. '05, p. 189, § 15; L. '09, p. 23, § 11; L. '09, pp. 382, 383, §§ 1, 2; L. '09, p. 387, § 1; L. '09, pp. 638, 639, §§ 1—5; L. '09, p. 654, § 1; L. '09, Ex. Sess., pp. 64, 65, §§ 1—5.]

See notes to last section.

§ 8139. Change of Boundaries—Fourth and Fifth Senatorial and Third and Fourth Representative Districts.

That sections 2, 3, 10 and 11 in township 26 north, range 44 east of the Willamette Meridian in Spokane county, be and the same are hereby taken from the area in the fifth senatorial and the fourth representative districts, and be and the same are hereby added to, made a part of and incorporated into the area of Foothills precinct in the Fourth senatorial and third representative districts. [L. '21, p. 153, § 1.]

§ 8140. Same.

That the southeast quarter (SE $\frac{1}{4}$) of section twenty-eight (28), in township twenty-seven (27) north, of range forty-three (43), east of the Willamette Meridian, in said Spokane county, be, and the same is hereby, taken from the area composing North Colbert precinct in the fifth senatorial and fourth representative districts, in said Spokane county, and be, and the same is hereby, added to, made a part of and incorporated into the area of Colbert precinct, situated in the fourth senatorial and third representative districts, in said Spokane county, Washington. [L. '21, p. 659, § 1.]

§ 8141. Same.

That the following described area in Spokane county, Washington, being now known and designated as Cowley precinct therein, be, and the same is hereby, transferred from the fifth senatorial and fourth representative districts to the seventh senatorial and sixth representative districts,—that is to say:

Beginning at the northwest corner of the northeast quarter (NE. $\frac{1}{4}$) of section thirty-five (35), in township twenty-five (25) north, of range forty-two (42), east of the Willamette Meridian; thence south along the north and south center line of said section 35 to the south line of said section; thence east along the south line of section 35, township 25, north, of range 42, east of the Willamette Meridian, and the south line of section thirty-six, township twenty-five, north, of range forty-two east of the Willamette Meridian, and the south line of section 31, township 25, north, of range 43, east of the Willamette Meridian, to the intersection of the south line of said section and the center line of Latah Creek; thence northwesterly along the center line of Latah Creek to the west line of section 36, township 25, north, of range 42, east of the Willamette Meridian; thence north along the east line of said section to the northeast corner thereof; thence west along the north line of section 36 and 35 to the northwest corner of the northeast quarter of section 35, township 25, north, of range 42, east of the Willamette Meridian, the place of beginning. [L. '21, p. 659, § 2.]

§ 8142. [6886.] Senators Elected in 1902, and Every Four Years Thereafter.

At the general election to be held on the first Tuesday after the first Monday in November, 1902, and every four years thereafter, a senator shall be elected in the following numbered single senatorial districts, namely: The second, sixth, seventh, eighth, sixteenth, nineteenth, twenty-first, twenty-fourth, twenty-sixth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-ninth, fortieth and forty-second, as numbered in section 8137, who shall continue in office for the term of four years. [L. '01, p. 92, § 3.]

§ 8143. [6887.] Senators Elected in 1904, and Every Four Years Thereafter.

At the general election to be held on the first Tuesday after the first Monday in November, 1904, and every four years thereafter, a senator shall be elected in each of the following numbered single senatorial districts, namely, the third, fourth, fifth, tenth, eleventh, twelfth, thirteenth, fourteenth, seventeenth, twentieth, twenty-second, twenty-third, twenty-fifth, twenty-seventh, twenty-eighth, thirty-eighth and forty-first, as numbered in section 8137, who shall continue in office for the term of four years. [L. '01, p. 93, § 4.]

§ 8144. [6888.] Senators Elected in Single Districts.

At the general election to be held on the first Tuesday after the first Monday in November, 1902, a senator shall be elected in each of the

following numbered single senatorial districts, namely, the first, ninth, fifteenth and eighteenth, as numbered in section 8137, who shall continue in office for the term of two years; and at the general election to be held on the first Tuesday after the first Monday in November, 1904, and every four years thereafter, a senator shall be elected in each of said single senatorial districts numbered one, nine, fifteen and eighteen, as numbered in section 8137, who shall continue in office for the term of four years. [L. '01, p. 93, § 5.]

§ 8145. [6889.] Election of Representatives.

The representatives provided for in this chapter shall be elected at the general election to be held on the first Tuesday after the first Monday in November, 1902, and every two years thereafter. [L. '01, p. 93, § 6.]

§ 8146. [6890.] Formation of New Precincts Does not Affect Apportionment.

Precincts which have recently been formed, or which hereafter may be formed, or which for any reason are not mentioned herein by name, shall be part of the same senatorial and representative districts as the precincts from which they were formed. [September 11, 1890, § 9; 1 H. C., § 45; L. '01, p. 93, § 7.]

CHAPTER II.

EXPENSES.

§ 8147. [6891.] Supplies—How Purchased.

All stationery, desk supplies and furnishings required by the state legislature and the state officers located at the capital shall hereafter be purchased and provided and accounted for in the same manner and under the same rules and regulations as govern the purchase and provision and accounting of the supplies for public printing. [L. '97, p. 205, § 1.]

At the time this section was enacted, this duty devolved upon the secretary of state: See L. '90, p. 412, § 1; Bal. Code, § 190. Supplies for public printing are now furnished by the public printer: See § 10333, *infra*. All supplies for state institutions in charge of the state board of control were purchased by said board: See § 10906, *infra*. And this included the state capitol: See *infra*, § 10899. The duties now devolve upon director of business control: See *infra*, § 10794.

§ 8148. [6892.] Warrants for Pay of Employees.

The state auditor shall draw warrants on the state treasurer for sums covering amounts due officers and employees of the legislature on presentation of certificates signed by the speaker or president, and countersigned by the chief clerk or secretary, of the body in which the service of the officer or employee is rendered, and showing amounts due to dates specified. Each of said warrants shall be drawn in favor and be made payable to the order of the officer or employee named in each certificate. [L. '90, p. 1, § 1; 1 H. C., § 46.]

Under Constitution, Article II, § 25, any public officer, agent, servant or contractor after the services shall have been rendered or the contract entered into,"

an allowance of extra compensation to employees of the legislature subsequent to the rendition of the services they were employed to perform is void: State ex rel. Eshelman v. Cheetham, 21 Wash. 437, 58 Pac. 771.

The constitutional restriction against the legislature's granting extra compensation to officers or servants after the rendition of the services or the entering into

the contract, and against increase of compensation of a public officer during his term of office does not prohibit the legislature, or either branch, from granting an employee compensation for services performed in addition to the regular duties for which he was employed: State ex rel. Eshelman v. Cheetham, 21 Wash. 437, 58 Pac. 771.

§ 8149. [6893.] Payment of.

Upon presentation to the state treasurer of a warrant drawn as provided for in the last preceding section, that officer shall pay the same from any money in the state treasury appropriated for the expenses of the legislature of the state of Washington: Provided, that should there be no money in the treasury of the state covered by such appropriation, the state treasurer shall indorse such fact on the warrant presented, and said warrants shall draw interest from date of such indorsement, and shall be payable thereafter as is provided by law and customs. [L. '90, p. 1, § 2; 1 H. C., § 47.]

§ 8150. [6894.] Warrants for Pay of Members.

The state auditor is hereby directed to draw warrants on the state treasurer for the mileage and daily pay of members of the legislature, on presentation of certificates showing amounts due for miles traveled and services rendered to dates specified. The certificates shall be signed by the speaker or president, and countersigned by the chief clerk or secretary, respectively, of the body to which the members belong. The warrants shall be in favor of and payable to the order of the persons named in said certificates. [L. '90, p. 6, § 1; 1 H. C., § 48.]

§ 8151. [6895.] Payment of.

Upon presentation of a warrant, drawn as provided for in the last preceding section, to the state treasurer, that officer shall pay the same out of any money in the treasury of the state appropriated for the expenses of the legislature of the state of Washington: Provided, that should there be no money in the state treasury covered by such appropriation, the state treasurer shall indorse such fact on the warrant presented, and said warrant shall draw interest from the date of such presentation and indorsement, and shall be payable thereafter in the manner provided by existing law and custom. [L. '90, p. 6, § 2; 1 H. C., § 49.]

§ 8152. [6896.] Warrants for Incidental Expenses.

The state auditor is hereby directed to draw warrants on the state treasurer for the incidental expenses of the legislature, on presentation of certificates showing amounts due for material furnished and services rendered to dates specified. The certificates shall be signed by the speaker or president, and countersigned by the sergeant-at-arms, respectively, of the body ordering the expenditures. The warrants shall be in favor of and payable to the order of the persons named in said certificates. [L. '90, p. 10, § 1; 1 H. C., § 50.]

§ 8153. [6897.] Payment of.

Upon presentation of a warrant, drawn as provided for in the last preceding section, to the state treasurer, that officer shall pay the same out of any money in the treasury of the state appropriated for the expenses of the legislature of the state of Washington: Provided, that should there be no money in the state treasury covered by such appropriation, the state treasurer shall indorse such fact on the warrant presented, and said warrant shall draw interest from the date of such presentation and indorsement, and shall be payable thereafter in the manner provided by existing law and custom. [L. '90, p. 10, § 2; 1 H. C., § 51.]

CHAPTER III.**VACANCIES.****§ 8154. [6898.] Vacancy—How Filled—Writ of Election.**

Whenever a vacancy occurs in the legislature of the state of Washington during or prior to any session of the legislature which occurs before any general election of the state of Washington, it shall be the duty of the governor of the state to forthwith issue a writ of election providing for the filling of such vacancy by an election; said writ shall, in substance, be as follows:—

The state of Washington to the electors of — (senatorial or representative) district, county or counties, of the state of Washington, greeting:—

You are hereby commanded to hold an election to fill the vacancy in the — (here state whether in the house or senate) caused by the — (here state cause of vacancy), which said election shall be held upon the — day of —, A. D. 189—.

In witness whereof, I have hereunto set my hand, and caused the seal of the state of Washington to be affixed thereto.

— —, Governor.

Attest:

— —, Secretary of State.

Which said writ shall be at once transmitted to the auditor or auditors of the county or counties wherein said district is situated. [L. '91, p. 2, § 1; 1 H. C., § 52.]

See Const., Art. II, § 15, vacancies, how filled.

See note to § 5366, supra, contest of elections for legislature.

§ 8155. [6899.] Election, How Held.

Such election shall be held in every way as provided by law for general elections in the state of Washington, except as herein otherwise provided. [L. '91, p. 3, § 2; 1 H. C., § 53.]

§ 8156. [6900.] Notice, by Whom and How Given.

It shall be the duty of the auditor or auditors of the county or counties wherein the district is situated, wherein said election is to be held, to give notice of such election by posting notices of the same in at least four public places within said district, or if said district be

composed of more than one county, then in four public places in either county, and by posting one notice at the front door of the courthouse of the county or counties wherein said district is situated, in substance following:—

To the electors of — (senatorial or representative district, as the case may be), in the county of —, in the state of Washington:—

Notice is hereby given that, by virtue of a writ of election issued by his excellency the governor of the state of Washington, an election will be held for the purpose of electing a — (representative or senator, as the case may be) from the — district, in the county or counties of —, in the state of Washington, to fill the vacancy caused by the — (state cause of vacancy), upon the — day of —, 189—, at the various voting places within said district, where the last general election was held, within the usual hours provided by law for holding general elections.

In witness whereof I have hereunto set my hand this — day of —, 189—. —, County Auditor of — County.

Which said notice shall also be published once in some newspaper published within the county or counties in which said district is situated, if there be a newspaper in said county or counties, and if not, then in some newspaper of general circulation within said district. [L. '91, p. 3, § 3; 1 H. C., § 54.]

§ 8157. [6901.] Further Requirements as to Notice.

Said notice shall be posted at least ten days prior to the day when said election is to be held; and be published in said newspaper at least five days before the day of holding said election. It shall also be the duty of the county auditor or auditors, in addition to posting and giving said notice, as hereinbefore provided for, to give a copy of said notice to the chairman or any member of the county central committee of all the political organizations existing within the county or counties in which said district is situated, at least ten days before the day when said election shall be held. [L. '91, p. 4, § 4; 1 H. C., § 55.]

§ 8158. [6902.] Registration of Voters—Who Entitled to Vote.

The registration of voters for the general election, or, where the district is within an incorporated city, for the municipal election next preceding the holding of a special election, shall be deemed to be a registration of voters for the purposes of such special election, and shall be used at such election as the registration of such special election: Provided, that any voter not registered, who has become entitled to vote since the last registration, shall be entitled to vote upon proving to the satisfaction of the judges and inspector of the said election that such voter is entitled to vote, and that such voter has become entitled to vote since the last registration was closed. [L. '91, p. 4, § 5; 1 H. C., § 56.]

See supra, § 5115 et seq., registration of voters.

§ 8159. [6903.] Nominations of Candidates, Filing of.

All nominations of candidates for the office to be filled by the writ of election hereinbefore provided for shall be filed with the auditor of

the county or counties wherein said district is situated, at least five days before the day appointed for said election. [L. '91, p. 4, § 6; 1 H. C., § 57.]

§ 8160. [6904.] Candidates may be Nominated, How.

In addition to the manner in which candidates may be nominated by law for such special election, the candidates for the office named in such writ of election may be nominated by the chief committee of any political organization within the county or counties wherein said district is situated. [L. '91, p. 4, § 7; 1 H. C., § 58.]

§ 8161. [6905.] Officers of Election, Who Deemed to be.

At such special election the judges and inspectors of election appointed by the county commissioners of the county or counties wherein said district is situated for the last general election preceding such special election shall be deemed to be the officers of such special election, and the county auditor shall, immediately upon receiving the writ of election from the governor, proceed to notify said officers of the holding of said election. [L. '91, p. 4, § 8; 1 H. C., § 59.]

See supra, § 5158 et seq., appointment and qualifications of election officers.

CHAPTER IV.

EVIDENCE FOR CONTEST OF ELECTION OF LEGISLATOR.

§ 8162. [6906.] Who may Contest Election of Members of the Legislature.

The right of any person declared duly elected to a seat in the council or house of representatives, may be contested by any qualified voter of the county or district to be represented by such councilman or representative. [Code 1881, § 3125.]

The present force of this act is doubtful.

§ 8163. [6907.] Contestant to File Statement With Clerk of Court.

The person contesting such election shall, within thirty days after election, file with the clerk of the district court of the district in which the alleged cause or causes of the contest originated, a concise statement of the grounds on which he intends to rely, verified by affidavits. [Code 1881, § 3126.]

Superior court, under the state government.

§ 8164. [6908.] Clerk to Issue Commission to Take Depositions.

Immediately on the filing of such statement in the clerk's office, the said clerk shall issue a commission directed to two justices of the peace in the contestant's district, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking depositions of such witnesses as the parties to such contest may wish to examine. [Code 1881, § 3127.]

§ 8165. [6909.] Requisites of Notice—How Served.

Written notice of such contest, specifying the time and place of taking depositions, and before whom to be taken, and a copy of the statement certified by the clerk of said court, shall be delivered to the person whose election is contested, or, if he cannot be found, it shall be left at the house where he last resided by the sheriff of the county in which such person claims his residence, within ten days after such statement shall have been filed in the clerk's office. [Code 1881, § 3128.]

§ 8166. [6910.] Sheriff to Return Notice to Clerk.

The sheriff into whose hands such notice and certified copy may come shall make due service thereof, and shall return to the proper clerk a certified copy of such notice, with the manner and time of service indorsed thereon, for which he shall be entitled to receive from the party contesting such election the same fees for service and mileage as are allowed in the district [superior] court for the service of original writs. [Code 1881, § 3129.]

§ 8167. [6911.] Witnesses must Attend.

Either of said justices of the peace shall have power, at any time, to issue subpoenas for witnesses, at the request of either party, to be served by the sheriff as other subpoenas, and such justices, when met at the time and place appointed to take such depositions, shall have the same power to issue attachments and assess fines against witnesses as is given to justices of the peace in the trial of suits instituted before them. [Code 1881, § 3130.]

§ 8168. [6912.] Depositions of Witnesses.

Said justices of the peace shall meet at the time and place appointed to take the depositions of witnesses produced by the parties, which shall be reduced to writing by said justices, and sworn to and subscribed by said witnesses, respectively, and duly certified by said justices as depositions are in other cases, noting in the caption of each deposition by which party the witness was called. [Code 1881, § 3131.]

§ 8169. [6913.] Examination to Continue from Day to Day.

Said justices may continue said examination from day to day, if the business shall require it, and when the same is closed they shall deliver the depositions taken before them, together with their said commissions, to the clerk of the district [superior] court by whom the same was issued. [Code 1881, § 3132.]

§ 8170. [6914.] Clerk to Appoint Justice in Case of Failure to Serve.

If, at any time, either of the said justices shall become unable to proceed in such examination, said clerk may supply the vacancy by designating any other justice of the peace of the district in the place of such justice. [Code 1881, § 3133.]

§ 8171. [6915.] Fees to be Allowed Sheriff and Justices.

The sheriff, for the service of such subpoenas, and the justice for issuing the same and taking the deposition, shall receive from the party

at whose instance such services are performed, the same fees as are allowed them for similar service in other cases. [Code 1881, § 3134.]

§ 8172. [6916.] Clerk to Transmit Proceedings to Secretary.

It shall be the duty of said clerk to seal up such depositions, together with the original statement of the grounds of such contest, and the copy of notice served upon the party whose right is contested, and the commission issued to the justices of the peace, and transmit the same by mail to the secretary of state, indorsing thereon the names of the contesting parties, and the branch of the legislature before which such contest is to be tried. [Code 1881, § 3135.]

§ 8173. [6917.] Duty of Secretary of State.

It shall be the duty of the secretary of state to deliver the same unopened to the presiding officer of the house in which such contest is to be tried, on or before the second day of the session of the legislature next after taking such depositions, and such presiding officer shall immediately give notice to said house that said papers are in his possession. [Code 1881, § 3136.]

§ 8174. [6918.] Respective Houses to Try Contested Election.

Each house of the legislature is the judge of the qualifications and election of its members, and shall try all contested elections of its members in such manner as it may direct. [Code 1881, § 3137.]

See Const., Art. II, § 8.

§ 8175. [6919.] Depositions may be Taken After Notice of Contest, etc.

At any time after notice of any contest shall be given and before the trial of such contested election before the proper branch of the legislature, it may be lawful for either party to such contest to take depositions to be read on the trial thereof, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on any trial pending in the district [superior] court, and such deposition when thus taken shall be sealed up by the officer taking the same and directed to the secretary of state, who shall keep the same unopened and deliver them to the presiding officer of the house in which such contest is to be tried, to be disposed of by such officer as the depositions specified in section 8172. [Code 1881, § 3138.]

§ 8176. [6920.] Legislature may Authorize Taking of Depositions.

Nothing contained in this chapter shall be so construed as to abridge the right of either branch of the legislature trying any contested election, from granting commissions to take testimony, or from sending for and examining before such branch any witnesses it may desire to hear on such trial. [Code 1881, § 3139.]

CHAPTER V.

SESSIONS.

§ 8177. [6921.] Biennial Sessions of the Legislature Commence When.

The third legislature of the state of Washington shall meet on the second Monday of January, Anno Domini eighteen hundred and ninety-three, and sessions of the legislature shall be held biennially thereafter, commencing on the second Monday of January. [L. '91, p. 38; 1 H. C., § 60.]

See Const., Art. II, § 12, biennial and special sessions.

See *supra*, § 2237, disturbing meeting.

See *supra*, § 2338, intimidation of member.

CHAPTER VI.

TESTIMONY AND CLAIMS BEFORE.

§ 8178. [6922.] Attendance of Witnesses Compulsory.

Every chairman or presiding member of any committee of either the senate or house of representatives, or any joint committee of the senate or house of representatives, which, by the terms of its appointment, shall be authorized to send for persons and papers, shall have power, under the direction of such committee, to issue compulsory process for the attendance of any witness within the state whom the committee may wish to examine. [L. '95, p. 9, § 1.]

Compare L. '81, p. 36, §§ 1—3, procuring testimony before legislative committee.

§ 8179. [6923.] Chairman to Administer Oaths.

The chairman or presiding member of any committee of either the senate, house of representatives, or any joint committee thereof, shall be authorized to administer oaths to all witnesses coming before such committee for examination; and all witnesses who shall testify in any proceeding provided for in this chapter, shall be under oath or affirmation. [L. '95, p. 10, § 2.]

§ 8180. [6924.] Commission to Examine Absent Witnesses.

Every such chairman or presiding member shall also have power, under the direction of the committee, to issue a commission for the examination of any witness who shall be without the jurisdiction of the state, or if within the state, shall be unable to attend, or who shall, for any reason, be excused by the committee from attendance. [L. '95, p. 10, § 3.]

§ 8181. [6925.] Commission Executed During Recess.

Whenever such committee shall obtain authority for that purpose, from the senate or house, or legislature, by which it may be appointed, it may issue such commission to be executed during the recess of the legislature. [L. '95, p. 10, § 4.]

§ 8182. [6926.] To Whom Directed.

Every such commission shall be directed to such magistrate or other person, as the committee may designate, and interrogatories framed by the committee shall be annexed thereto. [L. '95, p. 10, § 5.]

§ 8183. [6927.] Commissioner to Subscribe to Oath.

The person to whom such commission shall be directed, if he resides within the state and accept the trust, shall, before entering upon the execution of his duties, take the oath of office prescribed in the Constitution. Such commissioner shall have power to issue process to compel the attendance of witnesses, whom he shall be required to examine, and shall have power to administer oaths to such witnesses. [L. '95, p. 10, § 6.]

§ 8184. [6928.] Private Examinations.

Unless otherwise directed by the committee, it shall in all cases be the duty of the commissioner to examine, in private, every witness attending before him, and not to make public the particulars of such examination, when so made in private, until the same shall be made public by order of the house or legislature appointing the committee. [L. '95, p. 10, § 7.]

§ 8185. [6929.] Witnesses Sworn.

Every witness so attending shall be examined on oath or affirmation, and his testimony shall be reduced to writing by the commissioner, or by some disinterested person in his presence and under the direction of said commissioner, and signed by the witness. [L. '95, p. 11, § 8.]

§ 8186. [6930.] Depositions Annexed.

When a commission shall have been duly executed, the commissioner shall annex thereto the depositions of the witnesses, duly certified by him, and shall, without delay, transmit the same by mail, inclosed and under seal, or deliver the same, to the chairman of the committee by which the commission shall have been issued, or to such person as by the committee directed. [L. '95, p. 11, § 9.]

§ 8187. [6931.] Fees.

A person executing any such commission shall be paid, out of the state treasury, the same fees that are allowed by law for the taking of depositions on commissions issued out of the superior courts of this state; and any witness attending before either house of the legislature, or any committee or joint committee thereof, or before any such commissioner, shall be so paid two (2) dollars per day for each day in attendance, and five (5) cents a mile for the distance necessarily traveled in attending as such witness. [L. '95, p. 11, § 10.]

§ 8188. [6932.] Punishment for Refusal to Attend.

A person who, being duly summoned to attend as a witness before either house of the legislature, or any committee or joint committee thereof, or commissioner authorized to summon witnesses, refuses or neglects, without lawful excuse to attend pursuant to such summons, shall be punished as for contempt, as hereinafter provided. [L. '95, p. 11, § 11.]

See *infra*, § 8194, failure to attend, a misdemeanor.

§ 8189. [6933.] Persons Refusing to Respond, in Contempt.

A person who, being present before either house of the legislature, or any committee or joint committee thereof, or commissioner authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper questions, or to produce, upon reasonable notice, any material and proper books, papers or documents in his possession or under his control, shall be punished as for contempt as hereinafter provided. [L. '95, p. 11, § 12.]

See *supra*, § 2338, penalty for refusing to testify.

See *infra*, § 8194, failure to testify a misdemeanor.

§ 8190. [6934.] Punishment of Persons in Contempt.

Any person being in contempt, as hereinbefore provided, shall be punished by a fine in any sum not less than fifty (50) dollars and not exceeding one thousand (1,000) dollars, or by imprisonment in the county jail in the county where such examination is being had, for any period of time not extending beyond the legislative session then being held, or by both such fine and imprisonment, as the legislative body which authorized such examination may order. And in case the contempt arises in a joint proceeding of both houses, or before a joint committee thereof, the senate shall prescribe the penalty. [L. '95, p. 11, § 13.]

§ 8191. [6935.] Conditional Punishment for Contempt.

If any fine is imposed against any person for contempt, as hereinbefore provided, he shall stand committed to the county jail of the county in which the offense was committed until such fine is paid. The presiding officer of the house, fixing the fine, shall issue a warrant to the sheriff of the county where the offense was committed, commanding him to imprison such person in the county jail until such fine is paid, or until he has been imprisoned in such jail one (1) day for every three (3) dollars of such fine. [L. '95, p. 12, § 14.]

§ 8192. [6936.] Process, How Served.

All process provided for in this chapter may be served in the same manner as is provided by law for the service of process in the superior court; and it shall be the duty of any officer to whom any process may be delivered or issued, to serve the same as directed: Provided, that in the service of process a copy thereof shall be delivered to the witness. [L. '95, p. 12, § 15.]

§ 8193. [6937.] Record of Proceedings.

Every such committee shall keep a record of its proceedings under the provisions of this chapter, which record shall be signed by the chairman or presiding officer of the committee, and the same returned to the legislative body by which the committee was appointed, as a part of the report of such committee. [L. '95, p. 12, § 16.]

§ 8194. [6938.] Punishment of Recalcitrant Witnesses.

Any person who shall fail to attend as a witness upon any committee appointed by either the house or senate of the state of Washington, or

both, after having been duly subpoenaed as provided in chapter VI of this title, or who, being in attendance as a witness before such committee, shall refuse to answer any question or produce any paper or document or book which he is required to answer or to produce by such committee, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars, or by imprisonment in the county jail for a term not longer than six months, or by both such fine and imprisonment. [L. '97, p. 46, § 1.]

See supra, §§ 8188, 8189, contempts.

§ 8195. [6939.] Evidence of Legislative Claims Against State.

All claims hereafter made to the legislature against the state of Washington for money or property, shall be accompanied by a statement of the facts on which such claim is based and such evidence as the claimant intends to offer in support thereof. Legislative committees to whom such claims are referred shall make a transcript or statement of the substance of the evidence given in support of such claim; such statement, together with the transcript of the evidence taken by the committee, shall be filed with the state auditor who shall retain the same as a record of his office. [L. '03, p. 53, § 1.]

CHAPTER VII.

SESSION LAWS.

§ 8196. [6940.] Enrolled Bill to be Filed With Secretary of State.

Whenever any bill shall have passed both houses, the house transmitting the enrolled bill to the governor shall also file with the secretary of state the engrossed bill, together with the history of such bill up to the time of transmission to the governor. [L. '07, p. 262, § 1.]

§ 8197. [6941.] Chapter Numbers—Citation.

Whenever any bill shall become a law the secretary of state shall number such bill in the order in which it became a law, commencing with each session of the legislature. Such number shall be in Arabic numerals, and shall be the chapter number of the act when published. A citation to the chapter number and year of the session laws heretofore or hereafter published shall be a sufficient reference to the act so designated. [L. '07, p. 262, § 2.]

§ 8198. [6942.] Temporary Publication.

The secretary of state shall cause to be printed for temporary use one thousand copies of each act filed in his office within ten days after the filing thereof, and in the order of its chapter number. The style and size of type, line and number of lines to the page shall be the same as shall be used in the permanent volume of the session laws of such session. [L. '07, p. 263, § 3.]

See infra, § 10325, public printer to print and bind.

§ 8199. [6943.] Distribution of Copies.

The secretary of state shall furnish one copy of each act as published to each member of the legislature at which such law was enacted, to each state officer, and to each state institution; five copies to each of the state educational institutions; and to each county auditor for the use of his county; twenty-five copies to the state law library, and such further distribution as may be necessary. [L. '07, p. 263, § 4.]

See *infra*, § 8223, distribution of session laws.

§ 8200. [6944.] Headings and Index—Distribution and Sale.

When all of the acts of any session and initiative measures enacted by the people since the next preceding session have been published in temporary form, the attorney general shall make the proper headings, side annotations and index of such acts or laws and shall after such work has been completed, have published and bound in good buckram at least twenty-five hundred copies of such acts and laws with such headings, annotations and indexes and such other matter as may be deemed essential, including a title page showing the session at which such acts were passed, the date of convening and adjournment of the session, and any other matter deemed proper including a certificate of such referendum measures as may have been enacted by the people since the next preceding session. When published as above provided the secretary of state shall deliver the same to the person authorized by law to have the custody and distribution thereof, who shall distribute the same as provided by law, the surplus copies to be sold at ten per cent above the cost thereof; and in determining such cost no account shall be made of the material and press work of the advance sheets or temporary publication of the session laws and acts. [L. '15, p. 60, § 1. Cf. L. '07, p. 263, § 5; L. '90, p. 631, § 4; 1 H. C., § 70; Bal. Code, § 118.]

§ 8201. [6945.] Unlawful to Publish, When.

It shall be unlawful for any person to print and publish for sale the session laws of any session in book form within one year after the adjournment of such session, other than those ordered printed by the secretary of state, or to deliver to any one other than such officer or upon his order any of the session laws so ordered printed by him: Provided, this section shall not apply to any general compilation of the laws of this state or to a compilation of any special laws or laws on any special subject. [L. '07, p. 264, § 6.]

§ 8202. [6946.] Expenses—How Paid.

The expenses incurred by the secretary of state in carrying into effect the provisions of this chapter, or in pursuance of any law or resolution of the legislature, shall be allowed and paid out of the state treasury upon presentation of the bills therefor to the satisfaction of the state auditor, who shall draw warrants in favor of the secretary upon the state treasurer, who shall pay the same out of the funds herein appropriated, or hereafter out of funds appropriated from time to time by the legislature for that purpose. [L. '90, p. 632, § 7; 1 H. C., § 73.]

"Chapter" has reference to act of 1890 relating to publishing the session laws.

§ 8203. [6947.] Duties in Arranging Laws.

In arranging the laws, memorials, and resolutions for publication, the secretary is hereby authorized to make such corrections in the orthography, clerical errors, and punctuation of the same as in his judgment shall be deemed essential: Provided, that when any words or clauses shall be inserted the same shall be inclosed in brackets; and no correction shall be made which changes the intent or meaning of any sentence, section, or act of the legislature. [L. '90, p. 632, § 8; 1 H. C., § 74.]

CHAPTER VIII.**STATE BOARD TO PROMOTE UNIFORMITY OF LEGISLATION.****§ 8204. [6948.] Governor to Appoint, and Fill Vacancies.**

Within thirty days after this act takes effect the governor shall appoint three suitable persons and they and their successors are hereby constituted "A board of commissioners for the promotion of uniformity of legislation in the United States." Any vacancy in said board shall be filled by appointment by the governor. [L. '05, p. 111, § 1.]

§ 8205. [6949.] Duty of Board.

It shall be the duty of said board to examine the subject of marriage and divorce, insolvency, the descent and distribution of property, the execution and probate of wills and other subjects upon which uniformity of legislation in the various states and territories of the Union is desirable, but which are outside of the jurisdiction of the congress of the United States; to confer upon these matters with the commissioners appointed by other states and territories for the same purpose; to consider and draft uniform laws to be submitted for approval and adoption by the several states; and generally to devise and recommend such other and further course of action as shall accomplish the purposes of this act. [L. '05, p. 111, § 2.]

§ 8206. [6950.] Record of Board.

The said board of commissioners shall keep a record of all its transactions, and shall, at each biennial session of the legislature, and may at any other time, make a report of its doings and of its recommendations to the legislature. [L. '05, p. 111, § 3.]

§ 8207. [6951.] Remuneration of Members.

No member of said board shall receive any compensation for his services, but each member shall be repaid from the state treasury the amount of his actual traveling and other necessary expenses incurred in the discharge of his official duty, after the account thereof has been audited by said board and by the state auditor, and said board shall keep a full account of its expenditures and shall report it in each annual report: Provided, that there shall be allowed such expenses for only one annual meeting of the commissioners within this state, and for only one commissioner (to be designated by a majority of said board or in case they cannot agree, by the governor) in attendance not oftener than once in each year at any conference of the commissioners from other states for the purposes stated, in section 8205, outside of this state. [L. '05, p. 111, § 4.]

LIBRARIES, MUSEUMS, AND HISTORICAL SOCIETY.

TITLE LIII.

LIBRARIES, MUSEUMS, AND HISTORICAL SOCIETY.

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CHAPTER I.

STATE LIBRARIES.

For former laws on this subject compare L. '54, pp. 415, 416; L. '63, p. 506; L. '67, pp. 124—129; L. '79, pp. 152, 153; L. '77, pp. 329, 330; Cd. '81, §§ 2588—2613; L. '90, pp. 254—259; 1 H. C., §§ 1298—1320; L. '93, pp. 136—140; 1 Bal. Code, §§ 2600—2617; L. '01, pp. 52, 53; L. '01, p. 57; L. '03, p. 351, § 1.

§ 8208. [6953.] Powers and Duties of Commission—Librarian and His Assistants.

The state library commission shall have full charge and control of the state library and of all its departments. It shall appoint a state librarian, who shall hold office at the pleasure of the commission. The state librarian shall take an oath to be filed in the office of the secretary of state that he will support the Constitution of the United States, the Constitution of the state of Washington, and will faithfully discharge his duties, and shall give bond in the sum of two thousand dollars payable to the state, with two or more sureties to be approved by the state library commission, that he will perform his duties as required by law. The state librarian shall appoint two assistant librarians, by and with the advice and consent of the state library commission, who shall qualify in like manner as the librarian, and under his direction and control discharge any and all duties required by him to be discharged. The state library commission shall adopt such rules for the convenient and economical management of the state library in all its departments as they deem fit. [L. '03, p. 352, § 2.]

See next section.

See *infra*, § 10770, law library committee.

See *infra*, § 10771, duties of state library commission devolve upon state library committee.

See *infra*, § 10893, state library commission abolished.

§ 8209. [6954.] State Law Librarian.

The assistant state librarian who has charge of the law department of the state library shall hereafter be entitled and known as the state law librarian. He shall hold his office by appointment of and at the pleasure of the supreme court. [L. '07, p. 43, § 1.]

Provision for salary omitted as superseded by the next section.

§ 8210. [6955.] Salary.

The salary of the state law librarian shall be two thousand four hundred (2,400) dollars per annum. [L. '09, p. 183, § 1.]

§ 8211. [6956.] Superintendent of State Traveling Library.

The state traveling library, together with all books, property, and appurtenances thereunto belonging, shall be under the control and management of a superintendent, to be appointed by, and hold office at the pleasure of, the state library commission, which shall have supervision over said superintendent and the books, property, and affairs of said traveling library. [L. '07, p. 375, § 1.]

See notes to § 8208.

See *supra*, §§ 4926—4931, county circulating libraries.

§ 8212. [6957.] Duties—Salary.

The superintendent shall be charged with all the duties now resting upon the state librarian with reference to said traveling library. The superintendent shall be allowed a salary of twelve hundred dollars (\$1,200) per annum, and necessary traveling expenses. [L. '07, p. 375, § 2.]

§ 8213. [6958.] Salary of Librarian.

The state librarian shall receive an annual salary of fifteen hundred dollars, to be paid monthly, and the state auditor shall draw warrants on the state treasurer therefor. [L. '13, p. 246, § 1. Cf. L. '03, p. 352, § 3.]

§ 8214. [6959.] Duties of Librarian.

The state librarian, under the direction and control of the state library commission, shall: (1) Assume charge of the state library and all its branches, provide rooms therefor and adjust and arrange it in such rooms, and also provide such fixtures and fittings as shall be necessary. (2) Purchase all books, reports and maps deemed necessary or proper for the use of the library. (3) Receive and take charge of all books, reports, maps or other documents which may be donated to said library. (4) Provide for the care and repair of the rooms, furniture, fixtures, books, reports and documents of the library. (5) Receive and distribute all public documents which he is required by law to receive and distribute. (6) Act as secretary of the state library commission and advisory board, and under the direction thereof assist in the organization or improvement of the state library or any department thereof. (7) Biennially, not more than thirty days before the meeting of the legislature, make a report to the state library commission, showing the work which has been done in all the departments of the state library and such other matters as are of interest in connection with the library work. He shall be authorized to make requisitions upon the state printing board for printing said report, and also for such other printing as may be necessary or proper in the discharge of his duties. (8) Discharge such other duties as he shall by law or the direction of the state library commission be required to discharge. All expenses incurred by him in the discharge of these duties shall be audited and allowed by the state library commission, and when ordered paid by them the state auditor shall draw his warrant upon the state treasurer for the amount thereof. [L. '03, p. 352, § 4.]

§ 8215. [6960.] Duties and Powers of Commission and Advisory Board.

The state library commission shall have the absolute direction and control of the law department of the state library, the arrangement thereof, and the purchases to be made in connection therewith. The state library commission with the advice and assistance of the advisory board hereinbefore created, shall also have control of the miscellaneous department of the state library, the system of traveling libraries and the state historical department (all of which are declared to be a part of the system of the state library) and shall direct such purchases, receive such donations as may be made, and direct its policy in all particulars. The

advisory board shall give particular attention to the building up of a state historical department and a system of traveling libraries, and shall give advice and counsel to all free libraries in the state, and to all communities which may propose to establish them, as to the best means of establishing and administering such libraries, the selection of good books, cataloguing, and other details of library management. [L. '03, p. 353, § 5.]

See notes to § 8208.

See *infra*, § 10771, duties of library advisory board devolve upon state library committee.

See *infra*, § 10893, library advisory board abolished.

§ 8216. [6961.] Commission and Board—Office of—Duty of Librarian as Secretary to.

The state library commission and the advisory board shall have their office at the office of the state librarian. The state librarian shall act as secretary to the commission and to the advisory board, and as such secretary shall keep a record of the proceedings of the commission and advisory board, accounts of the financial transactions of the commission, and under its direction, and with the advice and assistance of the advisory board, act in organizing or improving free public libraries and in the management of the state library or any department thereof. His expenses as such secretary shall be paid as are other expenses incurred by him. [L. '03, p. 354, § 6.]

See notes to §§ 8208, 8215.

§ 8217. [6962.] Custody of Public Documents, etc.

It shall be the duty of the printing board, or whoever shall have charge of the printing of the public documents of the state of Washington, to deliver such documents, when printed, immediately to the state librarian, who is declared to be the custodian thereof, except that the state printing board shall reserve one hundred copies of the reports of each state officer, which reports said printing board shall arrange in sets and suitably bind such sets in volumes and label the same "Washington Executive Documents," and shall further designate on the backs of such volumes the date of the series, the volume number, the reports contained in each volume, followed by the dates showing the period covered by such report; and shall then deliver such bound sets to the state librarian. The state librarian shall be charged with all deliveries made to him, and he shall receipt therefor and immediately distribute the same as hereinafter provided, surplus copies to be classified and stored by him in some room assigned for that purpose. Surplus copies of public documents in the custody of any state officer at the time when this act shall take effect shall be delivered by him to the state librarian, who shall receipt therefor. [L. '03, p. 354, § 7.]

§ 8218. [6963.] "Public Documents" Defined.

The term "Public Documents," as used in this chapter, shall include the supreme court reports, the session laws, the legislative journals, the reports of the state officers or of any commission or commissions, board

or boards of the state, or of any person or persons authorized by law to make such reports. [L. '03, p. 354, § 8.]

§ 8219. [6964.] Record of Public Documents—Biennial Report.

The state librarian shall keep a record of all public documents received by him, showing number of each received, the number distributed and to whom, and the number yet on hand, which record shall at all times be open to inspection. On or before the first day of January of each year he shall make a report to the state printing board showing the matters disclosed by such record since the time of making his last report, and shall biennially, in his report as state librarian, report to the governor in detail the number of volumes and pamphlets received, the number distributed and the number yet on hand, and shall call attention to any shortage or wasteful surplus, and shall make recommendations with relation thereto. The Washington state library commission, created by the act approved March 2, 1901, shall surrender to the librarian all books or documents in its possession when this act shall take effect, and the librarian shall receipt therefor and account for the same in the manner hereinbefore provided. He shall be liable on his official bond for all books and documents so received by him. [L. '03, p. 355, § 9.]

See notes to § 8208.

§ 8220. [6965.] Distribution of Public Laws and Reports.

Upon receipt of the public documents the state librarian shall deposit six copies of each publication in the state library, and shall place forty copies in reserve for the future needs of the library and to replace loss by fire or otherwise sustained by any office or institution named in this section, and shall then distribute as follows: [Laws '03, p. 355, § 10.]

See *infra*, § 8253, publications supplied to county law libraries.

§ 8221. [6966.] Reports of State Officers.

Of the unbound volumes of reports of the state officers he shall deliver to the officer making the report as many volumes thereof as said officer may require upon the officer making a written requisition therefor showing the names and addresses of persons for whom such reports are intended. [L. '03, p. 355, § 10, subd. 1.]

§ 8222. [6967.] Executive Documents.

Of the bound volumes of the executive documents referred to in section 8217, he shall deliver to the governor's office and to the governor one copy each; to the congressional library, to the University of Washington and to the Agricultural College and School of Science two copies each; to the normal schools of the state, and to the state, territorial, or district library of each state, territory or district one copy each; and one copy each to any foreign state or territory to which the state library commission shall require one to be sent. [L. '03, p. 355, § 10, subd. 2.]

§ 8223. [6968.] Session Laws.

Of the session laws he shall deliver to each executive state officer, and to each department presided over by such officer, to each department

of the United States government, to each of the senators and representatives in congress of this state, to each judge of the supreme court and to the office of each judge, to each superior judge of the state, to each United States district judge and each United States circuit judge within this circuit, to each United States district attorney and to each United States marshal, and to each registrar and receiver of the United States land offices within this state, to each prosecuting attorney, to each assistant attorney general, to each normal school of the state, to the Agricultural College and School of Science, to the University of Washington, to the law department of each state, territorial or district library in the United States, to each of the district courts of Alaska, to each province of the Dominion of Canada, to the clerk of the supreme court, to the supreme court reporter, to each member of the legislature during the session at which such laws were adopted, one copy. To the clerk of each United States district court within the state, for the use of such court, five copies. To the clerk of each of the other United States district courts, and of each circuit court, within this circuit, for the use of their respective courts, three copies. To the clerk of the supreme court of the United States, for the use of such court, ten copies. To the congressional library, and to the law department of the University of Washington, six copies each. To each bar association or public library within the state, three copies. To each county auditor, a sufficient number to supply each county officer and justice of the peace within his respective county with one copy for the official use of such officers, and not otherwise. Such further distribution may be made as the state library commission shall order. The surplus copies thereof shall be sold at the actual cost price with ten per cent added and the proceeds of such sales shall be paid into the state treasury for the use of the state library fund. [L. '03, p. 356, § 10, subd. 3.]

See supra, § 8199, distribution of session laws by secretary of state, a later enactment.

See supra, § 4523, publication and distribution of school laws.

§ 8224. [6969.] House and Senate Journals.

Of the senate and house journals he shall deliver one set to each member of the legislature during the session of which it is a journal, and to each executive state officer, to each free public library in the state, to each newspaper and magazine furnished free to the state library, to each state, territorial or district library in the United States, and to each province of the Dominion of Canada, one set; three sets shall be delivered to each of the normal schools, to the Agricultural College and School of Science, to the University of Washington, and to the law department of the University of Washington; any sets remaining undisposed of shall be disposed of in the same manner as the surplus copies of the session laws. [L. '03, p. 357, § 10, subd. 4.]

§ 8225. [6970.] Supreme Court Reports.

Of the supreme court reports, of each volume issued one volume shall be delivered to the law department of each state, territorial or district library, and to the supreme court of each state, territory or district of the United States, to each province of the Dominion of Canada

sending similar publications to the library of this state, to the clerk and each judge of the supreme court of this state, to each of the superior court judges, to the attorney general of the United States, to each United States district attorney within this state, to the attorney general and to each prosecuting attorney, to each United States district judge and each United States circuit judge within this circuit, to the general library of the University of Washington, to the Agricultural College and School of Science and to each of the normal schools. To the supreme court reporter two volumes shall be delivered; to the congressional library and to the supreme court of the United States, three volumes each; to the law department of the University of Washington, six volumes; to each bar association or public library within this state, two volumes; to the clerk of the supreme court of the state and to each judge thereof (the same to remain the property of said court) one volume. The state library commission may order such further distribution as it shall deem advisable. The state library commission shall order such distribution of bulletins and documents issued by the United States or any department thereof and forwarded to the state library as it shall deem advisable. [L. '03, p. 357, § 10, subd. 5.]

See *infra*, §§ 11064—11072, publication.

CHAPTER II.

PUBLIC LIBRARIES AND MUSEUMS.

§ 8226. [6971.] Establishment—Petition and Vote.

By a majority vote at any election, any city, village, town, school district, or other body authorized to levy and collect taxes, or by vote of its common council, any city or incorporated town may establish and maintain a free public library, with or without branches, either by itself or in connection with any other body authorized to maintain such library. Whenever twenty-five taxpayers shall petition, the question of providing library facilities shall be voted on at the next election or meeting at which taxes may be voted: Provided, that due public notice shall have been given of the proposed action. [L. '15, p. 27, § 1. Cf. L. '01, p. 336, § 1; L. '09, p. 396, § 1; L. '13, p. 383, § 1.]

See *infra*, § 8246, this chapter to apply to museums.

See *infra*, § 8966, in cities of first class.

§ 8227. [6972.] Public Aid to Circulating Libraries.

By similar vote money may be granted toward the support of libraries not owned by the public but maintained for its welfare and free use: Provided, that such libraries shall be subject to the inspection of the state library commission and registered by it as maintaining a proper standard; that the commission shall certify what number of books circulated are of such a character as to merit a grant of public money; and that the amount granted yearly to libraries on the basis of circulation shall not exceed ten cents for each volume of the circulation thus certified by the commission. [L. '01, p. 337, § 2; L. '09, p. 396, § 2.]

See *supra*, §§ 4926—4931, county circulating libraries.

§ 8228. [6973.] Annual Appropriations—Act Applies to All Free Libraries.

Taxes, in addition to those otherwise authorized, may be voted by any authority named in section 8226, and for any purposes specified in sections 8226 and 8227 and shall, unless otherwise directed by such vote, be considered as annual appropriations therefor until changed by further vote, and shall be levied and collected yearly, or as directed, as are other general taxes; and all money received from taxes or other sources for such library shall be kept as a separate library fund and expended only under direction of the library trustees on properly authenticated vouchers. Every free library now established and every free library hereafter established shall be maintained and managed as provided in this chapter. [L. '01, p. 337, § 3; L. '09, p. 396, § 3.]

§ 8229. [6974.] Management—Board of Trustees—Qualifications, etc.

The management and control of every library shall be vested in a board of five trustees (unless a larger number be decided upon by a vote at the time of establishment or at some subsequent annual election) who shall be elected by the legal voters; except that in cities and incorporated towns they shall be appointed by the mayor, with the consent of the city or town council, from citizens of recognized fitness for such position. No person shall be ineligible as a trustee by reason of sex, and no trustee as such shall ever receive any compensation. The first trustees shall determine by lot whose term of office shall expire each year, and a new trustee shall be elected or appointed annually to serve for five years, except when the board consists of more than five members, each trustee shall serve for a term of years corresponding to the number of regular members on the board in order that one term shall expire each year; all vacancies shall be as soon as possible filled in like manner as the members of the board are regularly chosen, and in an unexpired term for the residue of the term only. [L. '15, p. 28, § 2. Cf. L. '01, p. 337, § 4; L. '09, p. 397, § 4.]

§ 8230. [6975.] Officers of Board—Powers and Duties—Librarian.

The trustees shall immediately after taking office meet and organize by the election of one of their number president and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the library as may be expedient, not inconsistent with the law or this chapter. They shall have the supervision, care and custody of the rooms or buildings constructed, leased or set apart for the library and the exclusive control of the expenditures of all moneys collected for the library fund; and such money shall be paid out from the treasury by the proper officers upon the properly authenticated vouchers of the board of trustees without further audit. They may accept and receive gifts of money, real estate, books, or other property for library purposes. They may lease and occupy, purchase, or erect on purchased or donated grounds, an appropriate building or buildings for library purposes. They shall have power to appoint a chief librarian,

who shall possess such qualifications with respect to experience, ability, citizenship, electoral capacity, and residence as the board may require and who shall be subject to removal by the board. They shall adopt a system of competition or examination under which all appointments except that of chief librarian shall be made and under such system the chief librarian shall have power, by and with the consent of the board, to appoint all subordinate employees of the library, prescribe rules for their conduct, and remove them from office. So far as possible, all appointments shall be made for ascertained fitness for the work, and removals shall be made for demonstrated unfitness and neither appointments nor removals shall be made because of the candidate's race, color, political influence, or religious belief. The trustees shall have the power to do all other acts and things necessary to the management, custody, and control of the library. [L. '01, p. 338, § 5; L. '09, p. 397, § 5.]

§ 8231. [6976.] Annual Report of Trustees.

The trustees shall make an annual report at the close of each year to the city council or the proper body authorized to levy and collect taxes, stating the condition of their trust, the various sums of money received from the library fund and all other sources, how much money has been expended, the number of books and periodicals on hand, the number added during the year, the number missing or retired, the number loaned out and the general character of such loans, and such other statistics, information and suggestions as they may deem of general interest, together with their estimate of the income necessary for the proper maintenance of the library fund for the ensuing year: Provided, that nothing in this chapter shall be construed as empowering the board of trustees to incur any indebtedness except as there is sufficient money in the library fund applicable to the payment thereof. [L. '01, p. 339, § 6; L. '09, p. 398, § 6.]

§ 8232. [6977.] Registration by State Library Commission Necessary.

In order to avail the library of any provision of this chapter for state aid, the board of trustees shall apply to the state library commission to have the institution registered by the commission as a library under its visitation and supervision. [L. '01, p. 339, § 7; L. '09, p. 398, § 7.]

See notes to § 8208.

§ 8233. [6978.] Annual Report to State Commission.

Every library which receives state aid shall make to the commission an annual report verified by the oath of its presiding officer, and giving such information in such form as shall be prescribed by the commission. These reports shall be summarized and transmitted to the governor by the commission, together with the reports of its proceedings as required by law. [L. '01, p. 339, § 8; L. '09, p. 399, § 8.]

§ 8234. [6979.] Libraries to be Free.

Every library established or maintained under this chapter shall be forever free for the use of the inhabitants of the city, town, village, or

district where located, subject to such reasonable rules and regulations as the trustees may find necessary in order that the library shall be of the greatest benefit to the greatest number; and they may exclude from the use of the library any person who willfully violates such rules. [L. '01, p. 339, § 9; L. '09, p. 399, § 9.]

§ 8235. [6980.] Use by Nonresidents, County, and Other Towns.

The board of trustees of any free library in this state may, under such rules and regulations as it may deem necessary and upon such conditions as may be agreed upon, allow nonresidents of the city, town, village, or district in which the library is situated to use the books therein and may make exchanges of books with any other public library, either permanently or temporarily; and any such board may contract with the board of commissioners of the county in which the library is situated, or with the board of commissioners, village trustees, town or city council, of any neighboring county, village, town or city, to loan the books of said library to the residents of such county, village, town or city, upon the terms agreed upon in such contract; and every such board of trustees, board of county commissioners or village trustees, town or city council, is hereby empowered to make contracts for such purpose and to pay the consideration agreed upon therein to the board of trustees of such library out of the county, town, village, or city treasury upon the rendering of proper accounts therefor. [L. '01, p. 340, § 10; L. '09, p. 399, § 10.]

§ 8236. [6981.] Mutilation, etc.—Penalty.

Whoever intentionally injures, defaces, or destroys any property belonging to or deposited in any public library, reading-room, museum, or other educational institution, shall be punished by imprisonment in the penitentiary for not more than three years, or in the county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [L. '01, p. 340, § 11; L. '09, p. 400, § 11.]

See, also, *supra*, § 2656.

§ 8237. [6982.] Keeping Books Overtime—Penalty.

Whoever willfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging in or to any public or incorporated library, reading-room, museum, or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such article or other property may be kept, shall be punished by a fine of not less than one or more than twenty-five dollars, or by imprisonment in the jail not exceeding six months; and the said notice shall bear on its face a copy of this section. [L. '01, p. 340, § 12; L. '09, p. 400, § 12.]

§ 8238. [6983.] Transformation to Public Library.

Any corporation, association, school district or combination of districts may, by legal vote, duly approved by the state library commission, transfer the ownership and control of its library, with all its

appurtenances, to any public library under the supervision of the commission, and thereafter said public library shall be entitled to receive any money, books, or other property from the state or other sources, to which said corporation, association, or district would have been entitled but for such transfer; and the trustees or body making the transfer shall thereafter be relieved of all responsibility pertaining to property thus transferred. [L. '01, p. 341, § 13; L. '09, p. 400, § 13.]

§ 8239. [6984.] State Supervision—Failure by Local Authorities.

If the local authorities of any library, supported wholly or in part by state money, fail to provide for the safety and public usefulness of its books, the state library commission shall, in writing, notify the trustees of said library of what is necessary to meet the state's requirements, and on such notice all its right to further grants of money or books from the state shall be suspended until the commission certifies that the requirements have been met; and if said trustees shall refuse or neglect to comply with such requirements for sixty days after the service of such notice, the commission may remove them from office and thereafter all books and other library property wholly or in part paid for from state money shall be under the full and direct control of the commission which, as shall seem best for the public interest, may appoint new trustees to carry on the library, or may store it, or may distribute to other libraries the books paid for with state money. [L. '01, p. 341, § 14; L. '09, p. 400, § 14.]

§ 8240. [6985.] State to Loan Books—Official Publications.

Under such rules as it may prescribe, the state library commission may lend from any books it may have for the purpose of selections of books for a limited time to any public library in this state under its visitation or supervision, or to any community not yet having established such library but having conformed to the conditions required for such loans. All the official publications of the state shall be furnished, through the state library commission, to every free public library in the state, free of charge. [L. '01, p. 341, § 15; L. '09, p. 401, § 15.]

§ 8241. [6986.] Advice from State Commission.

The trustees or librarian of, or any citizen interested in, any public library in the state shall be entitled to ask from the state library commission any needed advice or instruction as to a library building, furniture and equipment, government and service, rules for readers, selecting, buying, cataloguing, shelving, or lending books, or any other matter pertaining to the establishment, reorganization, or administration of a public library. The commission may provide for giving such advice and instruction either personally or through printed matter and correspondence. The commission may, on request, select or buy books or furnish books instead of money apportioned, or may make exchanges and loans from any collection of books it may have in its possession. Such assistance shall be free to residents of this state as far as practicable, but the commission may in its discretion charge a proper fee to nonresidents, or for assistance of a personal nature or for anything which is not prop-

erly an expense to the state but which may be authorized for the accommodation of users of such library. [L. '01, p. 342, § 16; L. '09, p. 401, § 16.]

See notes to § 8208.

§ 8242. [6987.] Disposition of Funds.

The state library commission may use receipts from fees, fines, gifts from all sources, or sale of its bulletins or similar printed matter, for buying books or for any other proper expenses of carrying on its work. [L. '01, p. 342, § 17; L. '09, p. 402, § 17.]

See notes to § 8208.

See *infra*, § 9901, subd. 2, notary fees for commission part of library fund.

See *infra*, § 9911, fees of commissioners part of library fund.

§ 8243. [6988.] State Aid—Apportionments—Conditions—Vouchers.

Such sums as shall have been appropriated by the legislature as a fund for public library aid, shall be paid annually by the state treasurer on the warrant of the state auditor, according to an apportionment to be made for the benefit of deserving free libraries by the commission in accordance with its rules, and duly authenticated by it: Provided, that this money shall not be spent for any books except those approved or selected and furnished by the commission; that no locality shall share in the apportionment unless it shall raise and use for the same purpose not less than an equal amount from taxation or other local sources; that for any part of the apportionment not payable directly to the library trustees, the commission shall file with the state auditor proper vouchers, showing that it has been spent in accordance with law exclusively for books for free libraries or for proper expenses incurred for their benefit; and that books paid for by the state shall be subject to return to the commission whenever the library shall neglect or refuse to conform to the regulations under which it secured them. [L. '01, p. 342, § 18; L. '09, p. 402, § 18.]

§ 8244. [6989.] Abolition by Vote, etc.—Property Returned to State.

Any library established under this chapter may be abolished only by a majority vote of the people at a regular annual election, ratified by a majority vote at the next annual election. If any such library be abolished, its property shall be used first to return to the state library commission, for the benefit of other public libraries in that locality, the equivalent of such sums as it may have received from the state or from other sources as gifts for public use. After such return any remaining property may be used as directed in the vote abolishing the library; but if the entire library property does not exceed in value the amount of such gifts it may be transferred to the commission for public use and the trustees shall thereupon be freed from further responsibility. No abolition of a public library established under this chapter shall be lawful till the commission grants a certificate that its assets have been properly distributed and its abolition completed in accordance with law. [L. '01, p. 343, § 19; L. '09, p. 402, § 19.]

§ 8245. [6990.] Gifts—Title in Board.

All persons desirous of making gifts of money, personal property or real estate for the benefit of a public library shall have the right to vest the title thereto in the board of trustees, to be held and controlled by the board when accepted, according to the terms of the deed of gift, devise or bequest. [L. '01, p. 343, § 20; L. '09, p. 403, § 20.]

§ 8246. [6991.] Museums Included.

All provisions of this chapter shall apply equally to libraries and to combined libraries and museums, and the word library shall be construed to include reference and circulating libraries and reading-rooms. [L. '01, p. 343, § 21; L. '09, p. 403, § 21.]

CHAPTER III.

COUNTY LAW LIBRARIES.

§ 8247. Authorization.

In each county having a population of three hundred thousand or more there shall be a county law library, which shall be governed and maintained as hereinafter provided. [L. '19, p. 196, § 1.]

§ 8248. Board of Trustees—Officers and Meetings.

There shall be in every such county a board of law library trustees consisting of five members to be constituted as follows: The chairman of the board of county commissioners shall be ex officio a trustee, and the judges of the superior court of the county shall choose two of their number and two members of the bar of the county to be trustees. The term of office of a member of the board who is a judge shall be for as long as he continues to be a judge, and the term of a member who is from the bar shall be four years. Vacancies shall be filled as they occur and in the manner above directed. The office of trustee shall be without salary or other compensation. The board shall elect one of their number president and the librarian shall act as secretary. Meetings shall be held at least quarterly and as much oftener and at such times as may be prescribed by rule. [L. '19, p. 196, § 2.]

§ 8249. Powers of Board.

The board of law library trustees shall have power:

(1) To make and enforce rules for their own procedure and for the government, care and use of the library, and for the guidance of employees.

(2) To remove any trustee, except an ex officio trustee, for neglect to attend the meetings of the board.

(3) To employ a librarian and assistants and to prescribe their duties, fix their compensation and remove them at will.

(4) To purchase books, periodicals and other property suitable for the library and to accept gifts and bequests of money and property for the library, and to sell property which is unsuitable or not needed for the library.

(5) To examine and approve for payment claims and demands payable out of the county law library fund. [L. '19, p. 196, § 3.]

§ 8250. Reports by Trustees.

The board of law library trustees shall, on or before the first Monday in September of each year, make a report to the board of county commissioners of their county giving the condition of their trust, with a full statement of all property received and how used, the number of books and other publications on hand, the number added by purchase, gift or otherwise during the preceding year, the number lost or missing, and such other information as may be of public interest, together with a financial report showing all receipts and disbursements of money. [L. '19, p. 197, § 4.]

§ 8251. County to Provide Library Room.

The board of county commissioners of each county to which this act is applicable shall, upon demand by the board of law library trustees, provide a room suitable for the law library, adequately heated and lighted. [L. '19, p. 197, § 5.]

§ 8252. Persons Entitled to Use Library.

The use of the county law library shall be free to the judges of the state and to state and county officials and to the inhabitants of the county. The board of law library trustees may prescribe uniform rules for the use of the library. [L. '19, p. 197, § 6.]

§ 8253. Publications to be Supplied by State Officials.

State officials charged with the distribution of books, reports and publications are authorized to supply to each county law library established under this act the same books, reports and publications, and in the same quantities, as they are authorized to supply to the law library of the University of Washington; and the librarian of the state law library is hereby authorized and directed to distribute among the county law libraries established under this act, such duplicates of books and publications as may be in the supreme court library not needed for its purposes. [L. '19, p. 198, § 7.]

See supra, §§ 8220—8225, publications supplied.

§ 8254. Library Fund, Fees Credited to.

In every civil action hereafter commenced in the superior courts of counties to which this act is applicable, there shall be paid to the clerk of the court, in addition to other fees required by law, by the plaintiff or person instituting the action, when the case is entered in the court or when the first paper on his part is filed therein, a fee of one dollar (\$1), and by the defendant or other adverse party and by an intervener, or by groups of two or more defendants or other adverse parties or interveners appearing separately from the others, when his or their appearance is entered in the case, or when his or their first paper is filed therein, a fee of one dollar (\$1). Such fees shall be costs in the case and tax-

able as such. The clerk shall pay the same into the county treasury, where they shall go into the law library fund and be expended only for the county law library. [L. '19, p. 198, § 8.]

CHAPTER IV. UNIVERSITY MUSEUM.

§ 8255. [6992.] **State Museum at University.**

The museum of the University of Washington is hereby constituted and the state museum as a depository for the preservation and exhibition of documents and objects possessing an historical value, of materials illustrating the fauna, flora, anthropology, mineral wealth, and natural resources of the state, and for all documents and objects whose preservation will be of value to the student of history and the natural sciences. [L. '99, p. 40, § 1.]

§ 8256. [6993.] **Duty of Certain Officers to Send Scientific and Historical Material.**

It shall be the duty of all boards, commissioners and officers acting under the authority of this state who, in the performance of their duties, may come into possession of any documents or material having an historical or scientific value to send for preservation and exhibition all such documents or materials, unless otherwise by law provided for, to the state museum constituted by the last preceding section. [L. '99, p. 40, § 2.]

§ 8257. [6994.] **May Receive Gifts, etc.**

This museum may receive all such above-named documents or material for preservation and exhibition from any private person under such rules and regulations as the board of regents of the University of Washington may deem proper to make for the care of the aforesaid museum. [L. '99, p. 40, § 3.]

§ 8258. [6995.] **Board of Regents to have Control.**

The board of regents of the University of Washington ex officio shall have full charge and management of the state museum hereby created. [L. '99, p. 41, § 4.]

CHAPTER V. STATE HISTORICAL SOCIETY.

§ 8259. [6996.] **Duties of Historical Society as Trustee of the State.**

The Washington state historical society, a corporation existing under the laws of the state of Washington, be and the same is hereby created the trustee of the state for the intent and purposes hereinafter mentioned, viz.: (1) It shall be the duty of the said society to collect books, maps, charts, papers and materials illustrative of the history of this state, and of its progress and development. (2) To procure from pioneers authentic narrative of their experiences and of incidents relating to the early settlement of this state. (3) To gather data and information con-

cerning the origin, history, language and customs of our Indian tribes. (4) To procure and purchase books, papers and pamphlets for the several departments of its collections; climatic, health and mortuary statistics, and such other books, maps, charts, papers and materials as will facilitate the investigation of the historical, scientific and literary subjects. (5) To bind, shelf, store and safely keep the unbound books, documents, manuscripts, pamphlets and newspaper files now or hereafter to come into its possession. (6) To catalogue the collections of said society for the convenient reference of persons having occasion to consult same. (7) To prepare biennially for publication a report of its collections and such other matters relating to the work of the society as may be useful to the state and the people thereof. (8) To keep its rooms open at all reasonable hours of business days for the reception of citizens and visitors without charge. [L. '03, p. 377, § 1.]

§ 8260. [6997.] Books, Relics, etc., Held in Trust for State.

The books, maps, charts, relics, memorials, collections and all other property of the society now owned or hereafter acquired, shall be held by the said society perpetually in trust for the use and benefit of the people of the state of Washington. [L. '03, p. 378, § 2.]

§ 8261. [6998.] Board of Curators.

The governor, secretary of state and state treasurer shall be ex-officio members of the board of curators of the said Washington state historical society, authorized and empowered to vote upon all questions coming before the said board for its action. [L. '03, p. 378, § 3.]

§ 8262. [6999.] No Compensation.

No part of the moneys hereinafter appropriated shall be paid to any officer of the said historical society or to any employee thereof, as salary or compensation for services. [L. '03, p. 378, § 4.]

§ 8263. [7000.] State Historical Building—Appropriation—Site.

For the purpose of constructing a state historical building in the city of Tacoma, for the use of the Washington state historical society, there is hereby appropriated from the general fund of the state of Washington the sum of twenty-five thousand dollars: Provided, that a suitable site for such state historical building be furnished without cost to the state of Washington therefor, and that such site shall be deeded to the state of Washington. [L. '09, p. 866, § 1.]

This act is largely temporary in its nature and the last six sections are omitted for that reason.

§ 8264. [7001.] Commission to Complete Building.

For the purpose of erecting and completing the state historical building provided for by this act, the governor, the secretary of state, the state treasurer, the president of the Washington state historical society, the vice-president of the Washington state historical society and the secretary of the Washington state historical society shall constitute a board or commission to be known as the state historical building commission, of which

board the governor shall be chairman and the secretary of the Washington state historical society shall be secretary; the members of the said board shall act as such until the completion of the state historical building hereby provided for, and no member of said board shall be allowed or shall receive any compensation for his services as a member of such board, but all such members shall be allowed and be paid all their actual expenses while attending meetings of the board. [L. '09, p. 866, § 2.]

See note to last section.

§ 8265. [7001-1.] Newspapers for State Historical Society.

The boards of county commissioners of the several counties may, in their discretion, acquire without expense, files of not more than three newspapers published in their respective counties and have the same suitably bound and delivered to the Washington state historical society for preservation. Said society shall provide for such volumes a place in which they will be readily accessible to the public for examination and for the copying of extracts therefrom. [L. '15, p. 237, § 1.]

LICENSES.

TITLE LIV.

LICENSES.

See "Corporations," "Ferries," "Fish and Oysters," "Game," "Insurance," "Intoxicating Liquors," "Marriage," "Municipal Corporations," "Navigation," "Physicians," and other specific heads.

Acting without a license, when required, a misdemeanor: See *supra*, § 2673.

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37 Wash. 97, 79 Pac. 635, 107 Am. St. Rep. 798, 68 L. R. A. 889; Seattle v. King, 74 Wash. 277, 133 Pac. 442; Standard Oil Co. v. Graves, 94 Wash. 291, 162 Pac. 558.

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CHAPTER. I.

CERTIFIED PUBLIC ACCOUNTANTS.

§ 8266. [7003.] Board of Accountancy—Powers and Duties—Issuance of Certificates, etc.

The state board of accountancy shall have its office at such place in the state of Washington as shall be designated by the board, and its powers and duties shall be as follows:

First. To formulate rules for the government of the board and for the examination of, and granting of certificates of qualification to, persons applying therefor.

Second. To hold written examination of applicants for such certificates, at least semi-annually, at such places as circumstances and applications may warrant.

Third. To grant certificates of qualification to such applicants as may, upon examination, be found qualified in "theory of accounts," "practical accounting," "auditing" and "commercial law," to practice as certified public accountants.

Fourth. To charge and collect from all applicants such fee, not exceeding twenty-five dollars, as may be necessary to meet the expenses of examination, issuance of certificates and conducting its office: Provided, that all such expenses, including not exceeding five dollars per day for each member while attending the session of the board or conducting the examinations, must be paid from the current receipts; and no portion thereof shall ever be paid from the state treasury.

Fifth. To revoke for cause such certificates, after written notice to the holder, and a hearing being had thereon: Provided, that such revocation must receive the affirmative vote of at least four members of the board.

Sixth. To report annually to the governor, on or before the first day of January in each year, all such certificates issued during the preceding year, together with a detailed statement of receipts and disbursements: Provided, that any balance remaining in excess of the expenses incurred shall be transferred to the common school fund of the state.

Seventh. The board may, in its discretion, under regulations provided by its rules, waive the examination of applicants possessing the qualifications mentioned in subsection 3 of this section, who shall have been for more than one year prior to the passage of this act residents of the state of Washington, and who shall, in writing, apply for such certificate within one year thereafter.

Eighth. Every certified public accountant, during the time he continues the practice of his profession shall, annually, on such date as the board of accountancy may determine, pay to the secretary of said board of accountancy a fee of one dollar, in return for which payment he shall receive a renewal certificate for one year. [L. '03, p. 99, § 2.]

See *infra*, § 10854, duties devolve upon director of licenses.

See *infra*, § 10893, board of accountancy abolished.

§ 8268. [7004.] Eligibility for Examination—Designation.

Any citizen of the United States, or any person who has duly declared his intention of becoming such citizen, residing and doing business in the state of Washington, being over the age of nineteen years and of good moral character, may apply to the state board of accountancy for examination under its rules, and for the issuance to him of a certificate of qualification to practice as a certified public accountant; and upon the issuance and receipt of such certificate, and during the period of its existence, he shall be styled and known as a certified public accountant, and no other person shall be permitted to assume and use such title, or to use any words, letters or figures, to indicate that the person using the same is a certified public accountant. [L. '03, p. 100, § 3.]

§ 8269. [7005.] Penalty for Violation.

Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine in any sum not exceeding one hundred dollars. [L. '03, p. 101, § 4.]

CHAPTER II.**ARCHITECTS.****§ 8270. Certification of Building Architects.**

Any person residing in or having a place of business in the state, who, before this act takes effect, shall not have been engaged in the practice of architecture in the state of Washington, under the title of architect, shall before assuming the title of architect, secure a certificate of his qualifications to practice under the title of architect, as provided by this act. Any person who shall have been engaged in the practice of architecture under the title of architect before this act takes effect, may secure such certificate in the manner provided by this act. Any person having a certificate pursuant to this act may assume the title architect. No other person shall assume such a title or use any abbreviation thereof, excepting only landscape architects and naval architects, and not excepting these two classes if they combine with their landscape and naval work respectively the planning of buildings and supervision of their erection. [L. '19, p. 719, § 1.]

Statutory regulation of architects. *Ann. Cas.* 1914B, 1224; 36 *L. R. A.* (N. S.) 1203.

§ 8271. Applicants—Examinations—Graduates—Registrants.

Any citizen of the United States, or any person who has duly declared his or her intentions of becoming such citizen, being at least twenty-one years of age, may apply for examination or certificate of registration under this act. The examination shall have special reference to the construction and design of buildings, and a test of knowledge of the candidate of the strength of materials and of his or her ability to make practical application of such knowledge in the ordinary professional work of an architect, and in the duties of a supervisor of mechanical work on

buildings, and should also seek to determine his or her knowledge of the laws of sanitation as applied to buildings. The applicant who shall satisfactorily pass such architectural examination as shall be established by the board of examiners, shall be granted a certificate. The board of examiners in lieu of all examinations may accept:

(a) A diploma of graduation or satisfactory certificate from a recognized architectural school or college.

(b) Registration or certification as an architect in another state or country where the standard or qualifications for the same are not lower than those required by the board of examiners under this act shall be accepted by said board of examiners, and such architect may receive certification without examination. [L. '19, p. 720, § 3.]

See *infra*, § 10854, duties of examining board devolve upon director of licenses.

See *infra*, § 10893, architects' examining board abolished.

§ 8272. Certification Without Examination—Licenses.

Any person who shall, by affidavit, show to the satisfaction of the state board of examiners of architects that he or she was engaged in the practice of the profession of architecture on the date of the passage of this act shall be entitled to a certificate of registration without an examination: Provided, such application shall be made within six months after the passage of this act. Such license, when granted, shall set forth the fact that the person to whom the same was issued was practicing architecture in this state at the time of the passage of this act, and is therefore entitled to a license to practice architecture without an examination by the board of examiners, and the secretary of the board, shall, upon payment to the board of the fee of twenty dollars (\$20), issue to the person named in said affidavit, a license to practice architecture in this state, in accordance with the provisions of this act. In the case of a copartnership of architects, each member whose name appears must be licensed to practice architecture. No stock company or corporation shall be licensed to practice architecture, but the same may employ licensed architects. [L. '19, p. 721, § 4.]

See notes to § 8271.

§ 8273. Fees.

Every person applying for examination or certificate of registration under this act shall pay a fee of twenty dollars (\$20) to the board of examiners, and by it turned into the state treasury. All moneys received by said board shall be turned into the state treasury. [L. '19, p. 722, § 5.]

§ 8274. Record and Registration—Filing—Revocation of Certificate for Fraud.

The result of every examination or other evidence of qualifications, as provided by this act, shall be reported to the secretary of state by the board of examiners, and a record of the same shall be kept by the secretary of state, who shall issue a certificate of registration to every person certified by the board of examiners as having passed such examination or as being otherwise qualified to be entitled to receive the same. Every person securing such certificates shall file the same with the county clerk

of the county of which he resides or maintains a place of business. The governor may revoke any certificate, if such action be recommended by the board of examiners, after thirty days' written notice to the holder thereof and after a hearing before the board of examiners, upon proof that such certificate has been obtained by fraud or misrepresentation, or upon proof that the holder of such certificate has been guilty of felony in connection with the practice of architecture. [L. '19, p. 722, § 6.]

See notes to § 8271.

§ 8275. Annual Renewal of Certificates.

Every registered architect shall secure annually from the examining board a certificate of renewal of his registration and shall pay to the board of examiners for such renewal the sum of five dollars (\$5) annually. All renewals shall be registered and recorded in each county where he maintains his place of business within sixty days after the expiration of the previous certificate of registration, and failure to do so shall be punishable with a fine of five dollars (\$5) in addition to renewal fee; failure to renew certificate within one year from date of expiration of same, shall constitute forfeiture of certificate, and which may be renewed at the discretion of the board of examiners, after satisfactory oral or written examination. [L. '19, p. 723, § 7.]

See notes to § 8271.

§ 8276. Penalties.

Any violation of this act shall be a misdemeanor punishable for the first offense by a fine not less than fifty dollars (\$50) and not more than one hundred dollars (\$100), and for a subsequent offense by a fine of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), imprisonment for not more than one year, or both. [L. '19, p. 723, § 8.]

CHAPTER III.

BARBERS.

§ 8277. [7006.] Unlawful to Practice Without Certificate.

It shall be unlawful for any person to follow the occupation of barber in any incorporated city or town in this state, unless he shall have first obtained a certificate of registration as provided in this chapter: Provided, however, that nothing in this chapter shall apply to or affect any person who is now engaged in such occupation except as hereinafter provided. [L. '01, p. 349, § 1.]

Cited in 31 Wash. 192, 194; 36 Wash. 352; 48 Wash. 8, 12; 59 Wash. 320.

This act regulating the trade of barbering, operates equally upon all barbers within the respective classifications, and is not void as discriminating against one

class of citizens: State v. Sharpless, 31 Wash. 191, 71 Pac. 737, 96 Am. St. Rep. 893.

Statutory regulation of barbers. 15 Ann. Cas. 260; Ann. Cas. 1913D, 1054; 40 L. R. A. (N. S.) 637.

§ 8278. [7007.] Barbering, What Constitutes.

Shaving the face, or cutting the hair or the beard of any person either for hire or reward, shall be construed as practicing the occupation of barbering within the meaning of this chapter. [L. '01, p. 349, § 2.]

Cited in 48 Wash. 12.

§ 8279. [7011.] Barbers' Examining Board—Compensation and Expenses.

All money received or collected by said board or any member or officer thereof during any month shall be turned over before the tenth day of the succeeding month to the state treasurer together with a verified statement showing the sources from which such money was derived. [L. '13, p. 259, § 2. Cf. L. '01, p. 350, § 6.]

See *infra*, § 10854, duties of board devolve upon director of licenses.

See *infra*, § 10893, barbers' board of examiners abolished.

Cited in 48 Wash. 12.

§ 8280. [7012.] Biennial Report to Governor.

Said board shall report to the governor of this state biennially a full statement of the receipts and disbursements of the board during the preceding two years, a full statement of its doings and proceedings, and such recommendations as may seem proper. [L. '01, p. 350, § 7.]

See notes to § 8279.

Cited in 48 Wash. 12.

§ 8281. [7013.] Public Examinations—Notice Thereof.

Said board shall hold public examinations at least four times a year in different cities of this state, at such times and places as it may determine, notice of such meetings to be sent to the various applicants by mail, at least ten days before the meetings are to be held. [L. '01, p. 350, § 8.]

See notes to § 8279.

Cited in 48 Wash. 12.

§ 8282. [7014.] Certificate to Persons Now Engaged in Barbering.

Every person now engaged in the occupation of barber in cities of the first, second or third class in this state shall within ninety days after the approval of this chapter file with the secretary of said board an affidavit setting forth his name, residence and length of time during which and the places where he has practiced such occupation, and shall pay to the secretary of said board one dollar, and a certificate entitling him to practice said occupation for one year shall thereupon be issued to him. [L. '01, p. 350, § 9.]

See notes to § 8279.

Cited in 31 Wash. 194; 36 Wash. 352; 48 Wash. 12.

§ 8283. [7015.] Examination—Requirements—Fee—Renewals.

To obtain a certificate of registration under this chapter, any person excepting those mentioned in section 8282 shall make application to said board, and shall pay to the secretary an examination fee of five dollars, and shall present himself at the meeting of the board for examination of applicants. The board shall examine such person, and being satisfied that he is above the age of eighteen years, of good moral character, free from contagious or infectious disease [has studied the trade for two years as an apprentice under or as a qualified and practicing barber in this state, or other states], and is possessed of the requisite skill to properly

perform all the duties, including his ability in the preparation of the tools used, shaving, cutting of the hair and beard and all the various services incident thereto, and has sufficient knowledge concerning the common diseases of the face and skin to avoid the aggravation and spreading thereof in the practice of his trade, his name shall be entered by the board in a register hereinafter provided for and a certificate of registration shall be issued to him authorizing him to practice said trade in this state, for one year. All certificates shall be renewed each year, for which renewal, a fee of fifty cents shall be paid. All persons making application for examination under the provisions of this chapter, shall be allowed to practice the occupation of barber until the next meeting as designated by said board. [L. '01, p. 350, § 10.]

See notes to § 8279.

The bracketed words held unreasonable. See note, *infra*.

Cited in 36 Wash. 353; 48 Wash. 13.

An unreasonable provision restricting the granting of a license, for the practice of the trade of barbering, to apprentices of two years standing, does not render

unconstitutional the whole act, Laws of 1901, § 1, page 349, regulating such trade and requiring a license therefor: *State v. Walker*, 48 Wash. 8, 92 Pac. 775, 15 Ann. Cas. 257.

§ 8284. [7016.] Apprentices—Registration, and Limit.

Nothing in this chapter shall prohibit any person from serving as an apprentice in said trade under a barber authorized to practice under this chapter: Provided, that in no barber-shop shall there be more than one apprentice to each registered barber and all apprentices shall be registered with the secretary of said board for which registration no fee shall be paid. [L. '01, p. 351, § 11.]

See notes to § 8279.

§ 8285. [7017.] Certificate—Issuance and Display of.

Said board shall furnish to each person who has successfully passed examination, a certificate of registration, bearing the seal of the board and the signature of its president and secretary certifying that the holder thereof is entitled to practice the occupation of barber in this state, and it shall be the duty of the holder of such certificate to post the same in a conspicuous place in the shop. [L. '01, p. 351, § 12.]

See notes to § 8279.

Cited in 36 Wash. 352.

§ 8286. [7018.] Registration of Certificates.

Said board shall keep a register in which shall be entered names of all persons to whom certificates are issued under this chapter, and said register shall be at all times open to public inspection. [L. '01, p. 351, § 13.]

See notes to § 8279.

Cited in 36 Wash. 352.

§ 8287. [7019.] Revocation of Certificate—Grounds.

Said board shall have power to revoke any certificate of registration granted by it under this chapter, for (a) conviction of crime, (b) drunk-

eness, (c) having or imparting any contagious or infectious disease or (d) for doing work in an unsanitary or filthy manner: Provided, that before any certificate shall be revoked the holder thereof shall have notice in writing of the change [charge] or charges against him, and shall at a day specified in said notice, at least five days after the service thereof be given a public hearing and full opportunity, to produce testimony in his behalf, and to confront the witnesses against him. Any person whose certificate has been so revoked may after expiration of ninety days upon application have the same reissued to him upon satisfactory showing that disqualification has ceased. [L. '01, p. 351, § 14.]

See notes to § 8279.

Cited in 36 Wash. 354; 48 Wash. 13.

This act gives the proper authorities power to revoke a certificate of registration, for any of the causes specified therein, irrespective of whether the cer-

tificate was one issued prior or subsequently to the passage of said laws: State v. Chaney, 36 Wash. 350, 78 Pac. 915.

§ 8288. [7020.] Penalty for Violations.

Any person practicing the occupation of barber in any city of the first, second or third class in this state, without first having obtained a certificate of registration as provided in this chapter, or falsely pretending to be practicing such occupation under this chapter, or who uses, or allows towels to be used on more than one person before such towels have been laundered; or uses razors, lather, or hair brushes on more than one person before same shall have been sterilized or in violation of any of the provisions of this chapter, and every proprietor of a barber-shop who shall willfully employ a barber who has not such a certificate shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days, or both. [L. '01, p. 352, § 15.]

Cited in 31 Wash. 194; 36 Wash. 354; 48 Wash. 13.

CHAPTER IV.

BILLIARDS, POOL AND BOWLING.

§ 8289. [7021.] County Commissioners may Regulate and License—Fee.

The board of county commissioners of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool-halls, billiard-halls, and bowling-alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: Provided, that the annual license fee for maintenance or running such pool-halls, billiard-halls, and bowling-alleys shall in no instance be less than twenty-five dollars nor more than two hundred and fifty dollars; which said license fee shall be paid annually in advance to the county treasurer: And provided further, that nothing herein or elsewhere shall be so construed as to prevent the boards of county commissioners of the respective counties from revoking any license at any time prior to the expiration thereof for any cause by such board of county commissioners

deemed proper. And if said county commissioners revoke said license they shall refund the unearned portion of such license. [L. '09, p. 393, § 1.]

This section supersedes L. '73, p. 438, § 5; 1 H. C., § 2817, authorizing county licenses of billiard-tables.

See supra, § 2445, penalty for admitting minors into billiard-hall where liquors are sold. See infra, § 9034, in cities of second class.

Keeping of billiard or pool table as	power. 11 Ann. Cas. 66; Ann. Cas.
subject of exercise of the police	1913D, 1052; L. R. A. 1917E, 318.

§ 8290. [7022.] Penalty for Keeping Billiard-table, etc., Without License.

Any person who shall keep a billiard-table or tables, or bowling-alley or alleys, for hire, in any county in this state, without first taking out a license therefor, shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and costs shall be paid, or they may otherwise be discharged by due course of law. [L. '73, p. 439, § 6; 1 H. C., § 2818.]

The provision for wholesale liquor licenses is omitted as superseded.

§ 8291. [7023.] Billiard-table, etc.—When Deemed to be Kept for Hire.

Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming-tables, or bowling-alley or bowling-alleys, in a drinking saloon or house, or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking-house, shall, within the meaning of this chapter, be deemed to keep the same for hire. [L. '73, p. 440, § 10; 1 H. C., § 2822.]

CHAPTER V.

DOGS.

§ 8304. License Tax on Dogs—Disposition of Tax in Cities.

It shall be the duty of the county assessor of each county, at the time of listing personal property for assessment of taxes, to list all dogs owned or kept within the county, giving the name and place of residence of the owner or keeper, and the breed, size, color and sex of each dog, and to assess a license tax of one dollar (\$1) upon each male dog and spayed female, and two dollars and fifty cents (\$2.50) upon each female dog, and to make return of such lists and assessments to the county treasurer to be collected as other taxes are collected. Provided, that in cities of the first, second and third class the license tax collected on dogs shall be credited to the funds as provided by ordinance of such city, and no other tax shall be levied or collected on dogs in such cities: Provided, that said cities may authorize their humane societies to expend such license tax in defraying the expenses of any carrying out the purposes of such societies. All fees and fines collected as aforesaid over and above the amount of expenses required to be met by such society shall be turned over by it to the city from whence such fines or fees were obtained. [L. '19, p. 27, § 1.]

§ 8305. Domestic Animal Protection Fund.

There shall be in the county treasury of each county a special fund to be known as the "Domestic Animal Protection Fund" into which shall be paid all taxes assessed and collected under the provisions of this act, and the county treasurer, upon the payments of any such tax, shall issue to the person paying the same a receipt therefor describing the dog upon which such tax is paid, as the same is described and listed by the county assessor and shall also issue a metal tag bearing the number of the year in which, and showing the sex of the dog upon which, said tax is paid: Provided, that if at the end of any fiscal year the amount to the credit of the domestic animal protection fund shall exceed the sum of two hundred dollars, the board of county commissioners may transfer the amount in excess of the two hundred dollars to a wild animal bounty account to be used for the payment of bounties on wild animals killed within the county in the manner provided by sections 3702 to 3707, both inclusive, of this code. [L. '19, p. 28, § 2.]

§ 8306. Payment of Tax—Penalty.

All taxes assessed under the provisions of this act shall be due and payable on or before the first day of June in the year in which they are assessed; and it shall be the duty of the county treasurer, between the first and tenth days of June of each year, to furnish the sheriff of the county a list of all dogs on which the taxes have not been paid; and it shall be the duty of the sheriff to kill, or cause to be killed, all such dogs found in the county without a tag showing the payment of the tax for the current year, and the cost and expense thereof shall be charged to and paid out of the domestic animal protection fund of the county. [L. '19, p. 28, § 3.]

CHAPTER VI.**ELECTRICIANS.****§ 8307. License for Electric Installations.**

It shall be unlawful for any persons, firm or corporation to engage in, conduct or carry on the business of installing wires to convey electric current, in any first, second or third class city, or electric apparatus to be operated by such current, without first having obtained in the manner hereinafter provided and having in force a license so to do. [L. '19, p. 716, § 1.]

State or municipal regulation of electricians. *Ann. Cas.* 1916E, 694; 36 *L. R. A.* (N. S.) 78.

§ 8308. Application for License Fee—Bond.

Every person, firm or corporation desiring to engage in or engaged in and desiring to continue the business of installing wires to convey electric current, or electric apparatus to be operated by such current, shall on or before the first day of July of each year file with the secretary of state, an application in writing for a license so to do, which application shall state the name and address of the applicant, in the case of firms the names of the individuals composing the firm, and in the case of

corporations the names of the managing officers of such corporations, and shall state the location of the place of business of the applicant and the name under which the business is to be conducted. Before the license shall issue, the applicant shall pay to the secretary of state for the use of the state, an annual license fee of fifteen dollars (\$15), and shall execute and file with the secretary of state a bond running to the state of Washington in the penal sum of five hundred dollars (\$500) with good and sufficient surety to be approved by the secretary of state, conditioned to pay all damages sustained by any person on account of failure of the principal on such bond to comply with all laws of the state of Washington and ordinances and building codes of the city or town in which such electrical installations are performed, or for the failure of such principal to protect any person with whom such contract is made against liens for labor performed or material furnished in connection with such contract, the surety's total liability under the bond herein provided for shall in no event exceed the sum of five hundred dollars (\$500), and the right of action against the surety for recovery on the bond shall not exceed a period of ninety days from completion of any contract. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue: Provided, that all licenses issued prior to the first day of July, 1919, shall expire on the first day of July, 1920. [L. '19, p. 716, § 2.]

See *infra*, § 10862, duties of secretary of state devolve upon director of licenses.

§ 8309. Renewal of Licenses—Cancellation of Bond—Effect.

Every person, firm or corporation licensed under the provisions of this act shall be entitled, upon the expiration of his license or any renewal thereof, by the payment of a fee of fifteen dollars (\$15) on or before the date of the expiration of his license or any renewal thereof, to have his license renewed for the ensuing year ending July 1st, so long as the bond originally given in compliance with the provisions of this act shall remain in force. The cancellation or revocation of, or the withdrawal of the surety from, any bond filed in accordance with the provisions of this act shall ipso facto work a suspension of the principal on such bond, until such time as such principal shall furnish a new bond to be approved by the secretary of state. [L. '19, p. 717, § 3.]

§ 8310. Recovery of Damages Against Licensee.

Every person, firm or corporation damaged by the failure of any person, firm or corporation licensed under the provisions of this act to perform any contract for the installation of wires to convey electric current or of electric apparatus, in strict compliance with the laws of the state of Washington and all ordinances and building codes of any city or town in which such work is performed or damaged by the failure of such license contractor to protect such person, firm or corporation from liens for labor performed or material furnished in connection with any such contract may recover any damages sustained from such licensed contractor and the surety on the bond hereinabove provided for in any court of competent jurisdiction. [L. '19, p. 718, § 4.]

§ 8311. Application of Act.

This act shall not apply to individuals, firms or corporations or to municipalities authorized to engage in the business of making or selling electricity in connection with the construction or maintenance of lines or wires for the transmission of electricity from the source of supply to the service switch, fuses or circuit breakers on the premises or property to be supplied; nor to the work of said individuals, firms, corporations or municipalities in installing, maintaining or repairing on the premises of customers service connections and meters and other apparatus or appliances used in the measurement or the consumption of electricity by customers; nor to work in connection with the lighting of streets, alleys, ways, or public parks, areas or squares; nor to the work in connection with the work of persons, firms or corporations engaged in the business of transmission of intelligence by electricity, in installing and maintaining wires, apparatus and appliances used in such business, on its own premises or otherwise; nor to individuals, firms or corporations installing, maintaining or repairing apparatus or wires for making or distributing electricity upon the premises or property owned by them; nor to persons engaged in the business of installing and repairing ignition or lighting systems for motors and motor vehicles. [L. '19, p. 718, § 5.]

§ 8312. Penalty.

Every person, firm or corporation violating or failing to comply with any of the provisions of this act, shall be guilty of a misdemeanor. [L. '19, p. 719, § 6.]

CHAPTER VII.**EMBALMERS.****§ 8313. [7036.] Embalmers—Registration.**

It shall be unlawful for any person to follow the occupation of embalming in this state unless he shall have first obtained a certificate of registration as provided in this chapter: Provided, however, that nothing in this chapter shall apply to or affect any person who now holds a license as an embalmer from the state board of health of the state of Washington, except as hereinafter provided. [L. '09, p. 739, § 1.]

Statutory regulation of embalmers. 18 Ann. Cas. 477; Ann. Cas. 1913A, 1252.

§ 8314. [7037.] Embalming Defined.

Preparation of the body of any deceased person for the purpose of preserving the same for more than thirty hours after death, or preparing the remains of any deceased person for shipment by railway or other public conveyance between points within the state of Washington or between any points in the state of Washington and any points without said state, shall be construed as practicing the occupation of embalming within the meaning of this chapter. [L. '09, p. 739, § 2.]

§ 8315. [7041.] Embalmers' Examining Board—Disposition of Receipts.

All money received or collected by said board or any member or officer thereof, during any month shall be turned over before the tenth

day of the succeeding month to the state treasurer, together with a verified statement showing the sources from which such money was derived. [L. '13, p. 252, § 2. Cf. L. '09, p. 740, § 6.]

See *infra*, § 10854, duties devolve upon director of licenses.

See *infra*, § 10893, embalmers' examining board abolished.

§ 8316. [7042.] Biennial Reports.

Said board shall report to the governor of the state biennially, a full statement of the receipts and disbursements of the board during the preceding two years and a full statement of its doings and proceedings, and such recommendations as may seem proper. [L. '09, p. 740, § 7.]

§ 8317. [7043.] Public Examination—Notice.

Said board shall hold a public examination at least once in each year, at such time and place as it may determine. Notice of such meetings to be sent to the various applicants by mail at least ten days before the meetings. [L. '09, p. 740, § 8.]

See notes to § 8315.

§ 8318. [7044.] Power to Make Rules for Burial and Transportation.

Said board shall have authority to prescribe rules and regulations for the preparation of the bodies of deceased persons for burial or for transportation. Such rules and regulations shall be printed and a copy furnished to each licensed embalmer in the state. [L. '09, p. 740, § 9.]

See notes to § 8315.

See *supra*, §§ 6020, 6021, permits for burial and removal.

See *supra*, § 6027, burial without permit prohibited.

§ 8319. [7045.] State Licenses Continued—Certificate.

Every person now holding a state license by the Washington state board of health and engaged in the occupation of embalming shall within ninety days after the approval of this act file with the secretary of the board an affidavit setting forth his name, residence and length of time during which, and the place where he has practiced such occupation, and shall pay to the secretary of said board one dollar, and a certificate entitling him to practice such occupation until December 31st of that year shall thereupon be issued to him. [L. '09, p. 740, § 10.]

See notes to § 8315.

§ 8320. [7046.] Examination for Certificate—Fees—Subjects.

To obtain a certificate of registration under this chapter, any persons except those mentioned in the preceding section shall make applications to the board and shall pay to the secretary an examination fee of five dollars, and shall present himself at the next meeting of the board for examination of applicants. The board shall examine such persons in the following subjects: Anatomy, sanitary science, the care, disinfection, preservation, transportation and burial or other final disposition of the remains of deceased persons, and the rules and regulations of the state board of health relating to quarantine and communicable diseases. He

shall also demonstrate his proficiency as an embalmer by operations on cadaver. The examination papers and oral answers shall, when concluded, be graded upon the scale of 100. The average rating required to pass shall be fixed by the board prior to the examination, and the board having been satisfied that he has the requisite qualifications to practice the occupation of embalmer, his name shall be entered by the board in a register provided for that purpose and a certificate of registration shall be issued to him authorizing him to practice said occupation until December 31st of that year. Upon the issuance of said certificate each applicant shall pay a further fee of five dollars (\$5). Applications for renewal of licenses must be filed with the secretary of the said board on or before December 31st of each year, and shall be accompanied by a renewal fee of one dollar (\$1.) All certificates shall be renewed each year upon the filing of applications accompanied by renewal fee. [L. '09, p. 741, § 11.]

See notes to § 8315.

§ 8321. [7047.] Qualification of Applicant for License.

Each applicant for a license to practice embalming shall have attained the age of twenty-one years and shall have had not less than two years' experience under a licensed embalmer in this state, or in lieu thereof shall have had a practical experience of not less than one year under a licensed embalmer and shall have completed a regular course of instruction in a school of embalming recognized as being in good standing by the state embalmers' examining board of Washington. Such applications shall be filed with the secretary of the board not less than ten days prior to the day of the next examination, together with a sworn statement of the age of the applicant and his other qualifications as required by this chapter, and a certificate of good moral character signed by three responsible citizens, one of whom must be a licensed embalmer personally acquainted with the applicant for at least one year. [L. '09, p. 741, § 12.]

See notes to § 8315.

§ 8322. [7048.] Certificate to be Posted.

Said board shall furnish to each person mentioned in section 8319 and to each person who successfully passes an examination a certificate of registration bearing the seal of the board and the signature of its president and secretary, certifying that the holder is entitled to practice the occupation of embalmer in this state, and it shall be the duty of the holder of such certificate to post the same conspicuously in his place of business. [L. '09, p. 742, § 13.]

See notes to § 8315.

§ 8323. [7049.] Revocation of License—Notice of Charges.

Said board shall have power to revoke any certificate of registration or license granted by it under this chapter, if the holder thereof has been guilty of drunkenness or has been convicted of crime or who has obtained said license by any false or fraudulent representation, or who has been guilty of immoral or unprofessional or dishonorable conduct, or of willful or repeated violation of the rules or regulations of the state embalmers' examining board or of doing work in an unsanitary or filthy manner:

Provided, that before any certificate or license shall be revoked the holder thereof shall have notice in writing of the charge or charges against him and shall at a time specified in said notice, not less than ten days after the service thereof, be given a public hearing and full opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person whose certificate has been so revoked may, after the expiration of ninety days, upon application have the same reissued upon satisfactory showing that disqualification has ceased. [L. '09, p. 742, § 14.]

See notes to § 8315.

§ 8324. [7050.] Complainant to Deposit Costs of Hearing.

Any licensed embalmer who shall prefer charges against any other licensed embalmer shall at the time such charges are preferred deposit with the board a sum sufficient to cover the probable expense to the board in hearing such charges, and in the case the charge be substantiated in whole or in part, such deposit shall be returned to the complainant; but if such charge be not substantiated in whole or in part, the board shall retain a sum sufficient to reimburse it for the expense incurred, and return the balance of such deposit, if any there be, to the person making such deposit. [L. '09, p. 743, § 15.]

§ 8325. [7051.] Licenses on Foreign Certificates—Fee.

The said board shall recognize licenses issued to embalmers under the authority of the laws of any other state board having similar requirements to those existing in this state: Provided, that if such state or states recognize licenses issued under the authority of the laws of the state of Washington, then such licenses issued by authority of such other states may be deemed sufficient evidence of qualifications of the holder thereof without further examination for license in this state, and the holder of such license shall be entitled to have a license issued to him upon the payment of the sum of ten dollars (\$10). The owner of any license or renewal provided for in this chapter shall cause the same to be registered in the office of the local board of health of each city, town or county wherein he intends to practice the occupation of embalmer. [L. '09, p. 743, § 16.]

See notes to § 8315.

§ 8326. [7052.] Violations of Act—Penalty.

Any person practicing the occupation of embalmer in this state without having first obtained a certificate of registration or license, as provided in this chapter, or falsely pretending to be practicing such occupation under this act, or who violates any of the provisions of this act, or any of the rules or regulations prescribed by said board by authority of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or be imprisoned in the county jail not less than ten days nor more than ninety days, or both. [L. '09, p. 743, § 17.]

CHAPTER VIII.

OILS.

§ 8327. Definitions.

(a) The term "internal combustion engine" whenever used in this act shall be held and construed to mean and include any vehicle, engine or machine movable or immovable which is operated or propelled by the combustion of volatile and inflammable liquid fuels.

(b) The terms "liquid fuel," "liquid fuels," "fuel" and "fuels" whenever used in this act shall be held and construed to mean and include gasoline and all volatile and inflammable liquid fuels, produced or compounded for the purpose of operating or propelling internal combustion engines: Provided, that kerosene shall not be considered to be a liquid fuel in the meaning of this act.

(c) The term "distributor" whenever used in this act shall be held and construed to mean and include any person, firm, or corporation which produces, refines, manufactures or compounds and thereafter sells such liquid fuel in the state of Washington for use and sale in this state, or who imports and sells such liquid fuel into this state except as hereinafter provided. [L. '21, p. 669, § 1.]

Rem. Code, section 6051 et seq., levying a remunerative inspection tax on all oils and gasoline "before being sold or offered for sale," does not conflict with Constitution, Article VII, section 2, providing for uniformity and equality of taxation, and section 5 relating to the method of levying taxes; since these provisions refer to taxes upon property and not to taxes upon trades or to privilege or excise taxes: *Standard Oil Co. v. Graves*, 94 Wash. 291, 162 Pac. 558.

The exaction of a remunerative inspection fee for the inspection of all oils and gasoline "before being sold or offered for

sale" is not a tax on property, since it is to be paid only upon the contingency that the oil is sold or offered for sale: *Standard Oil Co. v. Graves*, 94 Wash. 291, 162 Pac. 558.

The act of 1917 levying a grossly excessive inspection tax upon illuminating oils, is unconstitutional as to oils in interstate commerce, but is enforceable as an occupation tax upon oils that have lost their interstate character by having been removed from the original packages or put in indefinite storage in this state: *Shell Co. v. State*, 113 Wash. 632, 194 Pac. 835.

§ 8328. Excise Tax of One Per Cent.

That in addition to the taxes now provided for by law each and every distributor, as defined in this act, who is now engaged or who may hereafter engage, in his own name, or in the name of others, or in the name of his representatives or agents of this state, in the sale of liquid fuel as herein defined, shall not later than the fifteenth of each calendar month render a sworn statement to the director of licenses of the state of Washington of all such liquid fuel sold by him or them in the state of Washington during the preceding calendar month, and pay an excise tax of one cent per gallon on all liquid fuel so sold as shown by such statement in the manner and within the time hereinafter provided. [L. '21, p. 670, § 2.]

§ 8329. Distributors to File Certificate.

All distributors of such liquid fuel in the state of Washington shall file a duly acknowledged certificate with the director of licenses on forms prescribed, prepared and furnished by him, which shall contain the name under which such distributor is transacting business within the state of

Washington; such certificate shall state the place or places of business and location of distributing stations of the distributor in the state of Washington, the name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership, and if a corporation, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers, resident general agent and attorney in fact. If such distributor is an association of persons, firm, partnership or corporation organized under the laws of another state, territory or nation, if it has not already done so, it must first comply with the laws of Washington relating to the transaction of its appropriate business therein. No distributor, as herein defined, shall, after this law goes into effect, sell any liquid fuel until such certificate is furnished as required by this act. [L. '21, p. 670, § 3.]

§ 8330. Monthly Statement by Distributor.

Every distributor of such liquid fuel shall render to the director of licenses of the state of Washington, on or before the fifteenth day of each month, on forms prescribed, prepared and furnished by said director, a sworn statement of the number of gallons of liquid fuel sold by it, him or them during the preceding calendar month, which statement shall be sworn to by one of the principal officers in case of a domestic corporation, or by the resident general agent or attorney in fact in case of a foreign corporation, or by the managing agent or owner in case of a firm or association, and shall contain a statement of the quantities of liquid fuel sold. Bills shall be rendered to dealers in liquid fuel as herein defined. Said bills shall contain a statement printed thereon in a conspicuous place that the distributor of such liquid fuel has assumed the liability to the state for the license tax herein imposed and that he, it, or they will pay said license tax on or before the fifteenth day of the following month. [L. '21, p. 671, § 4.]

§ 8331. Monthly Payment of Tax.

Said excise tax shall be paid on or before the fifteenth day of each month to the state treasurer of the state of Washington, who shall receipt the distributor therefor, and place the same to the credit of the motor vehicle fund. [L. '21, p. 671, § 5.]

§ 8332. Records.

Every distributor of such liquid fuel shall keep a record in such form as may be prescribed by the director of licenses of all purchases, receipts, sales and distributions of such fuel, and such record shall at all times during the business hours of the day be subject to inspection and examination by the director of licenses, or his deputies, or such other officers as may be provided by law. [L. '21, p. 671, § 6.]

§ 8333. Sticker Tags.

All liquid fuel sold in containers shall bear a sticker tag showing the date of invoice upon which the same was delivered, the name of the distributor of such fuel, and shall contain a statement that the liability for

the license tax thereon has been assumed by such distributor. [L. '21, p. 672, § 7.]

§ 8334. Violations.

It shall be unlawful for any person, firm or corporation dealing in liquid fuel to receive or accept any delivery or shipment of liquid fuel from any distributor or to pay for the same, or to sell or offer the same for sale, unless the statement provided for in section 8333 appears upon the container and upon all invoices for such liquid fuel. If any shipment of liquid fuel is received by any person, firm or corporation from any distributor, or is sold or offered for sale by him or them, upon which the requirements of sections 8330 and 8333 are not complied with, such person, firm or corporation shall be deemed guilty of a misdemeanor: Provided, that the provisions of this section shall not apply to the receipt or sale of liquid fuels which are exempt from state taxation under the Constitution and laws of the United States. [L. '21, p. 672, § 8.]

§ 8335. Rules and Regulations.

The director of licenses shall have the power and it shall be his duty from time to time, to adopt, publish and enforce rules and regulations not inconsistent herewith for the purpose of carrying out the provisions of this act. [L. '21, p. 672, § 9.]

§ 8336. Exportation.

Said excise tax shall not be imposed on liquid fuel when sold for exportation from the state of Washington to any other state, territory or nation: Provided, however, the distributor or exporting agent shall make a statement each month to the director of licenses showing the amount of liquid fuel exported. [L. '21, p. 672, § 10.]

§ 8337. Tax Precluded by United States Laws.

If any person shall receive such liquid fuels in such form and under such circumstances as shall preclude the collection of this tax from the distributor by reason of the provisions of the constitution and laws of the United States, and shall thereafter sell such liquid fuel in such manner and under such circumstances as may subject such sale to the taxing power of the state, such person shall be considered a distributor and shall make the same reports, pay the same taxes and be subject to all the other provisions of this act relating to distributors of liquid fuel. [L. '21, p. 673, § 11.]

§ 8338. Violations.

Any distributor, association of persons, firm or corporation violating any of the provisions of this act or any of the rules and regulations prescribed by the director of licenses for the purpose of carrying its provisions into effect, shall be deemed guilty of a gross misdemeanor. [L. '21, p. 673, § 12.]

§ 8339. Scope of Act.

Nothing in this act contained shall be construed to require the payment of the excise tax herein provided for, or the doing of any acts which

would constitute an unlawful burden upon the sale or distribution of liquid fuels as herein defined, in violation of the Constitution or laws of the United States. [L. '21, p. 673, § 13.]

§ 8340. Partial Invalidity.

If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. [L. '21, p. 673, § 15.]

CHAPTER IX.

PEDDLERS.

§ 8341. [7053.] Hawkers of Goods must Procure License.

If any person shall hereafter sell any goods, wares, or merchandise, at auction or public outcry, or shall sell or barter such goods, wares, or merchandise from traveling boats, wagons, carts, or vehicles of any kind, or from any pack-basket, or other package carried on foot, without first having obtained a license therefor from the board of county commissioners of the county in which such goods are sold or bartered, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five or more than fifty dollars, and shall stand committed to the county jail of the county in which said conviction may be had until such fines and cost of prosecution shall be paid, or they may be discharged by due course of law: Provided, that this act shall not be so construed as to apply to any sea-going craft, or to administrators or executors selling property of deceased persons, or to private individuals selling their household property, or furniture, or farming tools, implements, or livestock, or any produce grown or raised by such person, either at public auction or private sale. [L. '73, p. 437, § 1; L. '79, p. 130, § 1; 1 H. C., § 2824.]

See supra, § 5848 et seq., auctioneers.

This section is not in force in incorporated cities and it appears to supersede §§ 2603—2605 of 1 Hill's Code. Compare L. '67, pp. 70, 71; L. '69, p. 170.

It is expressly provided that this section is not affected by § 8344, infra; but except as to sales by auction or public outcry, it may be superseded by § 8353 et seq.

A clause in an ordinance excepting merchants from taking out a peddler's license, with the proviso that they shall not act as peddlers without first obtaining a license, is wholly ineffective as an exemption, leaving merchants in the same position as they would have been in without such clause: *Garfinkle, In re*, 37 Wash. 650, 80 Pac. 188.

A license as auctioneer, and also for a show or attraction, does not dispense with the necessity of procuring a license to vend drugs by public outcry on the streets required of traveling venders by city ordinance at Walla Walla: *Walla Walla v. Ferdon*, 21 Wash. 308, 57 Pac. 796.

Evidence that a license tax of \$100 for peddlers with two-horse wagons in the

city of Seattle, where there were eighty people engaged in the business, was burdensome and prohibitive of the transaction of the business does not sustain a finding that the same is excessive, since the question must be determined irrespective of the element of competition, individual ability, and other facts, not related to the business under the most favorable conditions; the city having the right in any event to impose a license upon peddlers for the purposes of revenue: *Garfinkle, In re*, 37 Wash. 650, 80 Pac. 188.

Validity of license fee on peddlers as regards reasonableness and uniformity. *Ann. Cas.* 1914D, 938; *Ann. Cas.* 1918E, 109; 35 *L. R. A.* (N. S.) 1074.

§ 8342. [7054.] Issuance of License.

The county commissioners of the several counties in this state shall have power to grant a license, or by order of their board to direct the county auditor to issue a license to any person to do any business designated in section 8341 for such sum not exceeding twenty-five dollars per annum as they may deem proper and expedient. [L. '73, p. 438, § 3.]

§ 8343. [7055.*] Farm Produce, Vending Authorized Without License.

It shall be lawful for any farmer, gardener or other person, without license, to sell, deliver or peddle, any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any farm produce or edibles raised, caught, produced or manufactured by such person in any place in this state, each and every day, except Sundays, and no city or town shall pass or enforce any ordinance prohibiting the sale by or requiring license from the producers and manufacturers of farm produce and edibles as herein defined, and all city or town ordinances in violation hereof are hereby declared void: Provided, that this section shall not prohibit the sale or delivery of dairy products on Sunday. [L. '17, p. 199, § 1. Cf. L. '97, p. 97, § 1.]

§ 8344. [7056.] License for Certain Articles Carried in Certain Ways.

It shall be unlawful for any person to peddle, sell or offer for sale or barter, any buggies, carriages, hacks, or road vehicles of any kind, stoves, ranges, pianos or any other merchandise except farm produce from any boat, wagon, cart or other vehicle of any kind or as a trailer thereto, or from any pack or other package carried on foot or from any pack animal, without having first obtained a license so to do from the county auditor of the county in which such merchandise is sold, or to be offered for sale or barter: Provided, this act shall not be construed to apply to any person or his agents selling any of said articles from his regularly maintained stock or established places of business when he has maintained said stock or place of business in the said county for a period of six months, nor to any administrators or executors selling any such property at public or private sale. And provided further, that this act shall not be construed to modify or repeal any other act on the subject of licenses or peddlers. [L. '03, p. 38, § 1.]

"This act" refers to §§ 8344—8346.

See, also, § 8341, supra. This section may be superseded: See note to § 8353.

§ 8345. [7057.] Daily License—County Auditor to Issue—Fees.

The county auditors of the respective counties in this state are hereby authorized and required to issue to any applicant therefor a license to sell or peddle any article of merchandise mentioned in the preceding section of this act from any boat, wagon, cart or other vehicle of any kind, or as a trailer thereto or from any pack or other package carried on foot or from any pack animal in any place in said county for the period of time to be specified in such license upon payment by such applicant of a license fee of ten dollars per day for the number of days for which license is issued. [L. '03, p. 38, § 2.]

"This act" refers to §§ 8344—8346.

§ 8346. [7058.] Penalty.

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall for each offense be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of thirty days, or by both such fine and imprisonment. [L. '03, p. 38, § 3.]

"This act" refers to §§ 8344—8346.

§ 8347. [7059.] Fee for Year or Portion of Year.

Every person, firm or corporation who peddles out [or, after shipment to the state, canvasses and sells by sample to users or consumers], clocks, agricultural implements or machinery, stoves, ranges, windmills, lightning-rods, wagons, buggies, carriages, surreys, and other similar vehicles, washing-machines, sewing-machines, churns, or groceries shall pay in advance a license tax of two hundred dollars (\$200) for each calendar year, or portion thereof, to be paid in each county in which said occupation is pursued. [L. '05, p. 372, § 1.]

This section, if valid, may supersede § 8344, *supra*, as to the articles specified; or it may be construed not to affect the daily license fee provided for in § 8345.

This section has been held void in so far as it discriminates against goods shipped into this state, in *Bacon v. Locke*, 42 Wash. 215; but omitting the part included in brackets, it may be held valid as to the balance, and is therefore retained.

This act providing that every person who canvasses or sells by sample certain specified articles "after shipment to the state," shall pay in advance a license fee of two hundred dollars per year, violates the state and federal restrictions against discrimination between citizens of this and other states, and is unconstitutional: *Bacon v. Locke*, 42 Wash. 215, 84 Pac. 721, 7 Ann. Cas. 589.

§ 8348. [7060.] Yearly License Issued by County Auditor.

Such license mentioned in the last preceding section shall be paid to the county auditor of the county in which such business or occupation is to be pursued and conducted. And such county auditor shall thereupon issue to such person a license under his official seal which shall permit such licensee to pursue and conduct such business in such county, for such calendar year or any unexpired portion thereof. [L. '05, p. 372, § 2.]

§ 8349. [7061.] Penalty.

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall, for each offense, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for a period of not more than thirty days or by both such fine and imprisonment. [L. '05, p. 373, § 3.]

"Act" in this section refers to §§ 8347—8349.

§ 8350. [7062.] License to Peddle Eyeglasses.

It shall be unlawful for any person to peddle, sell or offer for sale or barter any spectacles or eyeglasses, as an article of merchandise, from any boat, wagon, cart or other vehicle of any kind, or from any pack, basket, or other package carried on foot, or from a pocket of his clothing,

without having first obtained a license so to do from the county auditor of the county in which said merchandise is sold or to be offered for sale or barter: Provided, this act shall not be construed to apply to any person selling spectacles or eyeglasses in his regular, established place of business, nor to administrators or executors selling property of deceased persons at public or private sale. [L. '01, p. 173, § 1.]

"Act" in this section refers to §§ 8350—8352.

§ 8351. [7063.] County Auditor to Issue License—Fee.

The county auditors of the respective counties in this state are hereby authorized and required to issue to any applicant therefor a license to sell or peddle spectacles or eyeglasses, as an article of merchandise, from any traveling boat, wagon, cart or any kind of vehicle, or from any pack, basket or package carried on foot, or from a pocket of the clothing, in any of the incorporated cities or towns and elsewhere in said county, outside of the regular established place of business of such applicant, within this state, for the period of time to be specified in such license upon payment by such applicant of a license fee of five dollars per day for the number of days for which such license is issued. [L. '01, p. 174, § 2.]

§ 8352. [7064.] Penalty.

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not less than twenty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a term of thirty days or by both such fine and imprisonment. [L. '01, p. 174, § 3.]

"Act" in this section refers to §§ 8350—8352.

§ 8353. [7065.] Peddler Defined for Purpose of This Act.

The term peddler for the purpose of this act shall be construed to include all persons, both principals and agents, who go from place to place and house to house, carrying for sale, and offering for sale or exposure for sale, goods, wares or merchandise: Provided, that nothing in this act shall apply to peddlers in agricultural or farm products: And provided further, that nothing in this act shall apply to peddlers within the limits of any city or town which by city ordinance regulates the sale of goods, wares or merchandise by peddlers: And provided, further, that nothing in this act shall apply to vendors of books, periodicals or newspapers. [L. '09, p. 736, § 1.]

The legislature having specified no repeal of former laws, they are retained.

"Act" in this section refers to §§ 8353—8358.

See *infra*, § 10141, peddlers of drugs, license, etc.

Cited in 55 Wash. 290, 291; 79 Wash. 328.

censing statute or ordinance. *Ann. Cas.* 1912D, 1289; *L. R. A.* 1916B, 1293.

Who is peddler or hawker within li-

§ 8354. [7066.] Penalty for Peddling Without License.

Every peddler who shall sell or offer for sale or expose for sale, at public or private sale any goods, wares or merchandise without a county

license issued as hereinafter provided, shall be punished by imprisonment for not less than thirty days or more than ninety days or by fine of not less than fifty dollars or more than two hundred dollars or by both. [L. '09, p. 737, § 2.]

See *infra*, §§ 10755, 10756, union veterans' right to peddle without license.

§ 8355. [7067.] Application—Issuance by County Treasurer—Fees.

Every peddler, whether principal or agent, shall, before commencing business in any county of the state, make application in writing and under oath to the county treasurer for the county in which he proposes to make sales, for a county license. Such application must state the names and residences of the owners or parties in whose interest said business is conducted, and shall state the number of horses and vehicles to be used by him, and at the same time shall file a true statement under oath of the quantity and value of the stock of goods, wares and merchandise that is in the county for sale or to be kept or exposed for sale in said county, and shall at the same time make special deposit of five hundred dollars with the county treasurer aforesaid, and shall pay the said treasurer the county license fee as follows:

- (1) Peddler on foot, one hundred dollars.
- (2) Peddler with one horse and a wagon, one hundred and fifty dollars.
- (3) Peddler with two horses and a wagon, two hundred and fifty dollars.
- (4) Peddler with any other conveyance, three hundred dollars.

The county treasurer shall thereupon issue to said applicant a peddler's license, authorizing him to do business in the county aforesaid for the term of one year from the date thereof: Provided, that the license issued under and by virtue of this act shall expire by limitation on the second Monday of January succeeding the year of which said license was issued. Every county license shall contain a copy of the application therefor and shall not be transferable, and shall not authorize more than one person to sell goods as a peddler, either by agent or clerk, or in any other way than his own proper person. [L. '09, p. 737, § 3.]

"Act" in this section refers to §§ 8353—8358.

Cited in 55 Wash. 296, 297; 79 Wash. 329.

This section does not violate Const., Art. VII, § 5, providing that no tax shall be levied except pursuant to law and distinctly stating its object: *State v. Sheppard*, 79 Wash. 328, 140 Pac. 332.

Peddlers' license fees paid to the county treasurer, pursuant to this section, providing therefor without specific direction as to its application, become part of the general fund of the county: *State v. Sheppard*, 79 Wash. 328, 140 Pac. 332.

§ 8356. [7067½.] Record of Application.

The county treasurer of each county shall keep on file all applications for licenses issued thereon. All files and records of said county treasurer shall be in convenient form and open to public inspection. [L. '09, p. 738, § 4.]

§ 8357. [7068.] Cancellation of License—Return of Special Deposit.

Upon the expiration and return of each county license, the county treasurer shall cancel the same, indorse thereon the cancellation thereof

and place the same on file. He shall then hold the special deposit of the licensee thereunder for a period of ninety days from the date of said cancellation, and after satisfying any and all claims made upon the same in the section next following shall return said deposit or such portion of the same, if any, as may remain in his hands, to the licensee. [L. '09, p. 738, § 5.]

§ 8358. [7069.] Liability of Special Deposit—Attachment and Fines.

Each deposit made with the county treasurer of any county in this state shall be subject to all taxes legally chargeable to same, to attachment and execution on behalf of the creditors of the licensee whose claims arise in connection with the business done under his county license, and the treasurer may be held to answer as trustee in any civil action in contract or tort brought against any licensee, and shall pay over, under order of the court or upon execution, such amount of money as the licensee may be chargeable with upon the final determination of the case. Such deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violations of the provisions of the preceding sections, and which shall be a lien upon same and shall be collected in the manner provided by law. [L. '09, p. 738, § 6.]

**CHAPTER X.
TRADING STAMPS.**

§ 8359. [7069-1.] Licenses for Stamps.

Every person, firm or corporation who shall use, and every person, firm or corporation who shall furnish to any other person, firm or corporation to use, in, with, or for the sale of any goods, wares or merchandise, any stamps, coupons, tickets, certificates, cards, or other similar devices which shall entitle the purchaser receiving the same with such sale of goods, wares or merchandise to procure from any person, firm, or corporation any goods, wares, or merchandise, free of charge or for less than the retail market price thereof, upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other similar devices, shall before so furnishing, selling, or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person, firm or corporation from which such furnishing or selling, or in which such using, shall take place. [L. '13, p. 413, § 1.]

Cited in 46 Wash. 302; 79 Wash. 609; 80 Wash. 699; 85 Wash. 286.

Use of Trading Stamps: See Remington's Digest, Licens., § 6; Fleetwood v. Read, 21 Wash. 547, 58 Pac. 665, 47 L. R. A. 205; Oilure Mfg. Co. v. Pidduck-Ross Co., 38 Wash. 137, 80 Pac. 276.

This act is constitutional (overruling

Leonard v. Bassindale, 46 Wash. 301, 89 Pac. 879); State v. Pitney, 79 Wash. 608, 140 Pac. 918; State v. Pitney, 80 Wash. 699, 141 Pac. 883.

Right to impose license tax on use of trading stamps. 2 L. R. A. (N. S.) 592; 49 L. R. A. (N. S.) 1123, L. R. A. 1917A, 433.

§ 8360. [7069-2.] County License.

In order to obtain such license the person, firm, or corporation applying therefor shall pay to the county treasurer of the county for which

such license is sought the sum of six thousand dollars, and upon such payment being made to the county treasurer he shall issue his receipt therefor which shall be presented to the auditor of the same county, who shall upon the presentation thereof issue to the person, firm or corporation making such payment a license to furnish or sell, or a license to use, for one year, the stamps, coupons, tickets, certificates, cards, or other similar devices mentioned in section 8359. Such license shall contain the name of the grantee thereof, the date of its issue, the date of its expiration, the town or city in which and the location at which the same shall be used, and such license shall be used at no place other than that mentioned therein. [L. '13, p. 414, § 2.]

§ 8361. [7069-3.] How Redeemed.

No person, firm, or corporation shall furnish or sell to any other person, firm, or corporation to use, in, with, or for the sale of any goods, wares, or merchandise, any such stamps, coupons, tickets, certificates, cards, or other similar devices for use in any town, city or county in this state other than that in which such furnishing or selling shall take place. [L. '13, p. 414, § 3.]

§ 8362. [7069-4.] Penalty.

Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a gross misdemeanor. [L. '13, p. 414, § 4.]

Liens. See §§ 1104—1209.

See, also, "Animals"; "Dikes and Drains"; "Municipal Corporations"; "Taxation," and specific heads.

Lieutenant-governor. See "State Officers," § 10985.

Light and Power Companies. See "Electric Light and Power Companies," § 5430.

Limitations. Of actions, see §§ 155—178.

Of criminal actions, see § 2005.

Liquors. See "Intoxicating Liquors."

Livestock. See "Animals," § 3036.

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LOGS AND LOGGING.

TITLE LV.

LOGS AND LOGGING.

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CHAPTER I.

STATE LOG-SCALER.

§ 8363. [7070.] Lumber Districts, Establishment of.

That there be established within this state two districts for the survey and measurement of logs, and that counties of Whatcom, Skagit, San Juan, Island, Snohomish, King, Pierce, Mason, Lewis, Skamania, Clarke, Cowlitz, Wahkiakum, Pacific, Chehalis, Thurston, Kitsap, Jefferson and Clallam shall constitute district number one, and that Seattle, Washington, shall be the principal place of business of district number one; and that the counties [of] Okanogan, Stevens, Spokane, Lincoln, Douglas, Kittitas, Yakima, Franklin, Adams, Whitman, Garfield, Asotin, Columbia, Walla Walla and Klickitat shall constitute district number two, and that Spokane, Washington, shall be the principal place of business for district number two. [L. '97, p. 98, § 1.]

Compare L. '63, pp. 489, 490; L. '69, pp 391—394, survey and measurement of logs.

For former laws on the subject of this chapter, see L. '79, pp. 107—110; Cd. '81, §§ 2639—2652; L. '83, pp. 106—108, and 1 Hill's Code, §§ 2345—2357, and amendments of L. '93, p. 83, and L. '95, p. 127. This chapter appears to repeal by implication the sections of Hill's Code above referred to; hence they are omitted.

See *infra*, § 8399 et seq., boom companies.

See *infra*, § 10893, state log-sealer abolished.

§ 8364. [7071.] Duty of Scaler.

. It shall be the duty of the state log-scaler whose term of office has expired to make the scale bills, and record them in the books of the state log-scaler's office, within thirty days of the day he vacates his office, of all logs scaled by him or deputies prior to the time he surrenders the same to his successor, and for that purpose he shall have access to the books of the office for a period of thirty days; and all bills so made and recorded shall have the same validity as if made and recorded during his term of office. Each of said state log-scalers shall have a seal of office, and shall have engraved thereon the arms of the state of Washington, and the words "State Log Scaler, — District," and in said blank space shall be inserted the number of his district. [L. '97, p. 99, § 2.]

See *infra*, § 10893, state log-sealers abolished.

§ 8365. [7073.] May Appoint Deputies.

The state log-scaler may appoint any number of deputies necessary to transact the business of his district, with power to remove any of them at his pleasure, and it shall be the duty of such state log-scaler to appoint at least one deputy for a county, who shall thereafter be and reside in such county, upon a petition being presented to him by two or more master loggers showing that active operations are being carried on in the logging business by two or more master loggers in such county. [L. '97, p. 100, § 4.]

See notes to § 8364.

§ 8366. [7074.] Shall Scale Logs, When and How.

The state log-scaler, by himself or his deputy, at the request of the owner of any logs or timber, or any sheriff, coroner or constable who has replevied, attached or levied on any logs or timber, or any person who has a written order from the owner for the delivery of any logs or timber, to forthwith repair to any part of his district and survey such logs or timber, and, upon completing such survey, to make out a true and correct scale bill thereof, stating the person by whom, the time when and place where such logs or timber was scaled, at whose request and to whom scaled, if to anyone, and the scale mark placed thereon; the number of logs, and, when requested by the owner or any other person controlling the same, the number of pieces of logs or timber, together with the mark or marks thereon, and the number of feet therein contained, and shall sign the same; and thereupon he shall record such bill in the books of his office, and, upon being paid his fees for such services, he shall deliver the original bill to the person for whom the logs or timber is scaled, if any; if not, then to the person requesting the survey. No state log-scaler, or deputy scaler, shall in person survey any logs or timber owned wholly or in part by himself, but either may survey any such logs or timber owned wholly or in part by the other: Provided, that where logs which have been cut in any lumber district in this state have been run out of said district, it shall be lawful for the state log-scaler of the district in which said logs were cut, when requested so to do as above provided, to scale said logs by himself or deputy. The said scalers and their deputies shall, in surveying or measuring logs, make such allowance for hollow, rotten and crooked logs as would reduce and make them equal to good, sound and straight merchantable logs, and in surveying shall throw off all rotten, shaky or wany stuff, and make the same equal to good merchantable lumber. And the figures showing such survey shall, at the time of making the same, be entered by the scaler in pass-books kept for the purpose, which books shall be preserved and filed by the state log-scaler in his office for the inspection of all persons interested therein. The scale rule known as Drew's rule is hereby adopted as the only rule for the survey of logs in this state. [L. '97, p. 100, § 5.]

See notes to § 8364.

§ 8367. [7075.] Objection to Scaler's Scale—Rescale.

Any person considering any scale of the state log-scaler or any of his deputies incorrect, whether he be the owner or the purchaser of the logs so scaled, may contest said scale by serving on the state log-scaler of the district in which said logs were scaled a copy of a notice of his intention to contest such a scale and filing the original of such notice with the clerk of the court in the county in which said logs are situated, said notice to contain a statement of by whom and where the logs were cut, the mark thereon, the number thereof, and when and where they were scaled, and the amount of such scale, and where the logs are situated, and when and by whom moved from where they were originally scaled, if moved at all, and the clerk shall enter the same as an action entitled by naming the party giving the notice as plaintiff, and the state log-scaler as defendant, three days after the serving and filing of said notice, upon the application of

either party, the judge of the superior court of said county, shall in open court or at the chambers appoint two disinterested scalers to rescale said logs. Each of said persons so appointed shall forthwith scale said logs, and if they do not agree as to the quantity of lumber in said logs, then they shall be deemed to agree upon the sum of the smallest amount found by either of them plus one-half the difference between his and the other's scale, whereupon they shall make out a scale bill, as in this chapter provided, also stating thereon the amount of lumber each found to be contained in said boom, and the amount of fees due each, and sign and file the same with the same clerk of said court, and they shall each be entitled to receive for such services the fees allowed by this act for such services, and in event of there being a difference of more than ten per cent between the original scale of said logs by the state log-scaler and the amount agreed upon by the parties appointed to rescale said logs, then the court shall give judgment against the state log-scaler for all costs of such proceedings, including the cost of rescaling said logs, and order the state log-scaler to correct the books of his office, so that they shall show said logs to contain the amount ascertained by the rescale of said logs. In the event of there not being more than ten per cent difference between the scale of said logs, then judgment shall be entered against the plaintiff for the cost of the proceeding, including the fees of the persons appointed to rescale said logs. In event of the judgment of such proceedings being against the state log-scaler, the person paying for the original scale of said logs shall be entitled to recover from said state log-scaler or his bondsmen the amount he may have paid for such original scale and if he shall not have paid for such scale, then the state log-scaler shall not be entitled to recover the same. [L. '97, p. 101, § 6.]

See notes to § 8364.

§ 8368. [7076.] Duty to Scale When not Requested in Certain Cases.

It shall be the duty of the state log-scaler, or his deputy, to scale all lots or booms of logs containing fifty thousand feet or more, which may be offered for sale, whether requested to do so or not, if the same has not been scaled, and it shall also be the duty of the owner or purchaser of any logs to notify the state log-scaler of any logs in his possession that have not been scaled, and any person or association of persons who shall sell or remove any such logs from the state, that have been cut in the state, before the same shall have been scaled, shall be liable to the state log-scaler for one-half the value of such logs, so sold or removed from the state without having been scaled, which sum shall be recovered by the state log-scaler in a civil action, and when so recovered, one-half thereof, shall be paid by the state log-scaler into the general school fund. [L. '97, p. 102, § 7.]

See notes to § 8364.

§ 8369. [7077.] Scaler's Fees, Lien for.

The fees of the state log-scaler shall be: For surveying, scale marking, making scale bills and recording the same and posting in the ledger, three and a half cents per thousand feet for all logs and timber required to be surveyed; twenty per cent of the aforesaid fees shall be paid by

the state log-scaler, at least every three months, into the general fund of the state treasury; for recording any log mark, fifty cents; for making and certifying a copy of any matter which may be on record in his office, or for making duplicate scale bills, ten cents per folio, and fifty cents for each certificate thereon; for recording any instrument in writing authorized to be recorded in his office, other than scale bills, ten cents per folio, payable when such instrument is presented for record and before it is recorded, and no such instrument shall be deemed recorded until it is entered upon the index to the record. And for the purpose of securing to the state log-scaler the payment of his fees, whether the same are for surveying, making scale bills, or recording the same, or for any or all such services, such state log-scaler shall have a lien upon all such logs or timber surveyed and marked by him for the amount due for his services thereon, and may retain such lien by affixing the scale bill of such logs or timber and notify the same on the record of his office, before the delivery thereof, a true statement of the amount due him thereon, and that he claims a lien thereon for such amount and costs of collection; and any person who shall purchase, sell or remove said logs from the state shall be liable to the state log-scaler for the payment of said fees, and at any time that he may deem himself in danger of losing such lien, he may take possession of sufficient quantity of such logs to cover the amount of his lien and the costs of recovery, and if his bill is not paid within thirty days, after notice of [to] the owner or person in possession or in charge of said logs, then the state log-scaler may sell at public auction enough of such logs or timber to pay the amount due him, with the costs of collection, first giving ten days' notice of such sale by posting up five written notices thereof, one in his office, and one in each of the four most public places in the town or city where the sale is to be made, and at such sale the state log-scaler may become the purchaser. The sale may be made by the sheriff or any constable of the county. The only costs of collection allowed shall be ten per cent on the amount payable to the state log-scaler. [L. '97, p. 103, § 8.]

See notes to § 8364.

§ 8370. [7078.] Books in Office of Log-scaler.

The books of record in the state log-scaler's office shall be,—

First: A book in which shall be recorded the scale bills of all logs, timber and lumber surveyed by the state log-scaler;

Second: A book to be kept in ledger form, in which shall be posted and recorded as soon as any logs or timber is surveyed, separately and under their respective marks, all the logs and timber of each particular mark surveyed, together with the date of scale, the number of logs and the number of pieces of timber, for whom scaled, if to anyone, and the number of feet; which book shall be kept posted up so that it will show the matter above stated concerning each mark of logs scaled during each month. And the state log-scaler shall make and deliver to any person demanding the same a certified transcript of said record, as to mark or marks of logs or timber, upon being paid ten cents per folio, and the sum of fifty cents for his certificate of the same, and an index of the names and marks contained in each of said books shall also be kept. Any books

of the description before named, which have been kept in the office of the state log-scaler and which belong to said office, are hereby declared to be the records of said office, and to have and be of the same validity, force and effect as if the same had been kept by express authority of law. All the books of record hereinbefore mentioned and authorized to be kept in the office of any state log-scaler are hereby declared to be public records, and of as high degree of evidence as the original instrument therein recorded, and shall, in all courts and places in this state, be taken and held prima facie evidence of the matters therein stated, and such books shall not be removed from the state log-scaler's office, but any paper purporting to be a copy of any matter or thing of record in such office, certified under the hand of the state log-scaler or his deputy to be a correct transcript from the records in such office, shall, in all courts of this state, be received and read as prima facie evidence of the matters and things in such record contained and of the matters therein stated. [L. '97, p. 104, § 9.]

See notes to § 8634.

§ 8371. [7079.] Report to Governor.

The state log-scaler shall make a report of the total number of feet of logs which he has surveyed in his district for the year ending the last day of October, before the last day of November of each year, to the governor of the state. [L. '97, p. 105, § 10.]

CHAPTER II.

LUMBER AND SHINGLE WEIGHERS.

§ 8372. [7081.] Weighers, Removal of.

The governor shall have the power, and it is hereby made his duty, upon receiving a petition in writing from five manufacturers of shingles or lumber, complaining of the wrongful acts of any of said weighers or their deputies, to investigate such charges and in his discretion to remove such weigher and to appoint a successor for such weigher. [L. '95, p. 381, § 2.]

See *infra*, § 10893, state weighers of lumber and shingles abolished.

§ 8373. [7083.] Railroads to Provide Scales.

It shall be the duty of each of said railroads to construct scales capable of weighing cars loaded with lumber or shingles shipped from that portion of Washington west of the Cascade Mountains at some point on their respective lines and within the limits of this state for the purpose of weighing said lumber and shingles; and that it shall be the duty of each of said railroads doing business east of the Cascade Mountains to maintain scales on the east side of the mountains and within the limits of this state for the purpose of weighing lumber and shingles manufactured on each side of said mountains. [L. '95, p. 381, § 4.]

See, also, next section.

§ 8374. [7084.] Railroads to Provide Scales—Freight Weights.

All railroad companies operating any railroad or any part thereof within the limits of this state are required to provide scales and weigh at some common point or points within this state all cars loaded with lumber, shingles or any other forest products destined for shipment to any and all points within the limits of the state, and also carload shipments of said commodities to any and all points outside of the limits of this state. Also that charges for freight on said commodities be based on the weights determined by the weighing stations within the limits of this state. Also that all bills of lading of railroads operating within the limits of this state specify said provision. [L. '01, p. 300, § 1.]

§ 8375. [7085.] Deputies.

Each weigher shall have the right to appoint one or more deputy weighers. [L. '95, p. 382, § 5.]

§ 8376. [7086.] Weigher, Duty of.

All lumber and shingles to be shipped beyond the limits of this state by railroad shall first be weighed by said weigher or his deputy at the place where said scales are located. [L. '95, p. 382, § 6.]

See note to § 8372.

§ 8377. [7087.] Railroads to Accept Weights—Penalty.

If any lumber or shingles shall be shipped beyond the limits of this state by any railroad company before being weighed by said weigher or his deputy, said railroad shall be compelled to accept the weight named in the affidavit (if there be any affidavit) attached to the bill of lading, and in all cases where there is no such affidavit attached, said cars of shingles or lumber shall be weighed by said weigher in every instance; any failure to comply with the above requirements shall be adjudged a misdemeanor, and on conviction thereof shall, for each offense, be fined in any sum not less than five hundred dollars nor more than two thousand dollars. [L. '95, p. 382, § 7.]

§ 8378. [7088.] Weigher's Bill to Contain, What.

Upon weighing said shingles or lumber, the weigher or his deputy shall make out a bill, stating therein the names of the consignor and the consignee, the destination of said car of shingles or lumber and the place from which said car was billed, the name of the railroad owning such car and the number of said car, together with the number of shingles or amount of lumber said to be contained in such car, and the total weight of shingles or lumber contained therein. He shall enter upon the books of his office, to be provided by him and kept for that purpose, a correct copy of said bill, and shall mail or deliver to the consignee two correct copies of said bill, and to the agent of the railroad over which said car is shipped one correct copy of said bill, with the certificates thereto attached, that it is a true and correct bill, which bill so certified shall be presumptive evidence of the facts therein contained. [L. '95, p. 382, § 8.]

See note to § 8372.

§ 8379. [7089.] Fees.

Each weigher or his deputy shall receive and collect from the railroad by which said lumber or shingles were received, the sum of fifty cents a car for each and every car of lumber or shingles weighed by him. [L. '95, p. 382, § 9.]

See note to § 8372.

§ 8380. [7090.] Basis.

When any cars shall have been weighed, as herein designated, the said weight shall constitute the basis by which the weight of said lumber or shingles shall be determined. [L. '95, p. 382, § 10.]

CHAPTER III.**MARKING AND DRIVING.****§ 8381. [7091.] Logs and Timber Put Afloat must be Marked.**

Every person or copartnership who shall put any logs or timber into any river, or its branches or tributaries, small lake or its tributaries, bayou, marsh, or ditch in this state, for the purpose of rafting or floating the same to any place for manufacture or sale, shall have some mark or marks, previously selected by him or them, impressed in a conspicuous place upon the end or surface of each log or stick of timber so put into any of said waters. [L. '90, p. 110, § 1; 1 H. C., § 2358.]

See *infra*, § 8399 et seq., boom companies.

Power of state to prohibit or regulate floating of logs. 9 A. L. B. 1025.

§ 8382. [7092.] Marks to be Recorded—Notice.

Before any such mark or marks shall be used, it shall be the duty of such person or copartnership to cause a diagram and written description of the same, certified and signed by the owner or owners thereof, to be recorded in the office of the auditor of each county through which such logs or timber shall be floated for manufacture or sale, and also to give notice in writing to each log running or booming company doing business on any waters on which the logs or timber are floated, of such mark. The diagram and written description, to be recorded as aforesaid, must be different from any diagram and description already recorded in said office claimed by any other party. For recording and indexing the diagram and certificate aforesaid, the auditor shall be entitled to demand and receive a fee of twenty-five cents. [L. '90, p. 110, § 2; 1 H. C., § 2359.]

§ 8383. [7093.] Auditor to Record Marks, etc.—Fees.

It shall be the duty of any such auditor to record, in a book to be kept for that purpose, all marks and descriptions of marks furnished to him for that purpose, which are different from any other mark or description there recorded, which book shall be, at all reasonable hours, open to the inspection and examination of any person requiring it; and each of said auditors shall be entitled to receive for his fees, for each mark and description recorded, twenty-five cents, to be paid in advance by the party having the same recorded. [L. '90, p. 111, § 3; 1 H. C., § 2360.]

§ 8384. [7094.] Marks—Presumptions Arising from.

Any logs or timber having any such recorded mark or marks impressed thereon shall be presumed to belong to the party or parties in whose name said mark or marks shall have been recorded. [L. '90, p. 111, § 4; 1 H. C., § 2361.]

§ 8385. [7095.] Failure to Record Marks—Effect of.

Every person or copartnership who shall neglect to have his or their mark or marks recorded, as required in section 8382, shall be debarred from all the benefits arising from the due recording of such mark or marks, and the vendee or assignee of any such logs or timber shall be subject to the same regulations and restrictions. [L. '90, p. 111, § 5; 1 H. C., § 2362.]

§ 8386. [7096.] Counterfeit Marks—Penalty for Making.

If any person shall falsely make, forge, or counterfeit such mark, and use the same in marking logs or timber, knowing the same to be the mark of another person, and with intent to defraud, shall be guilty of felony, and shall be punished by imprisonment at hard labor in the state prison not to exceed five years, or by fine of not less than one hundred dollars nor more than two thousand dollars. [L. '90, p. 111, § 6; 1 H. C., § 2363.]

See, also, § 2595, *supra*.

§ 8387. [7097.] Alteration of Mark or Brand—Penalty for.

If any person, corporation, or partnership shall willfully and knowingly, or by gross carelessness, alter or deface, obliterate or destroy, any of such brands or marks hereinbefore provided for, or shall request or order the same to be altered, defaced, obliterated, or destroyed, and the same is altered, defaced, obliterated, or destroyed in pursuance of said request or order, said person, corporation, or partnership so altering, destroying, obliterating, or defacing such brands or marks, or requesting or ordering the same to be done, and it appearing the same was done in pursuance of said order or request, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars and not more than five thousand dollars. [L. '90, p. 111, § 7; 1 H. C., § 2364.]

See, also, § 2594, *supra*.

§ 8388. [7099.] Improvements for Logging may be Made on Streams.

It shall be lawful for any person or company interested in logging to make such improvements on any stream used for logging within the state of Washington as may be necessary to carry on said logging business; that such improvements may consist in clearing out obstructions and straightening the channel by cutting across sand or gravel bars, and that side dams and sheer booms may be used in making such improvements. [L. '91, p. 217, § 1; 1 H. C., § 2368.]

§ 8389. [7100.] Right of Owners to Fence Across Streams.

Owners of land or their agents shall have the right to fence across all unmeandered streams at any time when such streams are not used for

a public highway, or by making a fence that will not be an obstruction. [L. '91, p. 217, § 3; 1 H. C., § 2369.]

Section 2 of this act was vetoed by the governor.

§ 8390. [7101.] Unlawful to Take up Branded Logs—Record of Brand.

It shall be unlawful for any corporation except boom companies who are compelled to catch and hold logs, spars, piles, boom sticks, shingle bolts, and other timber of value, or any person, or persons, to take up, and it shall be unlawful for any corporation, person or persons to sell, dispose of, or appropriate to its, his or their own use, any saw-logs, hewn or other timber of value found on the bank or banks of, or adrift on any bay, harbor, river, stream, bayou, marsh, ditch or other waters in this state that shall be marked with any mark, or brand, without permission of the owner thereof or his agent: Provided, the person or persons claiming such mark or brand shall have had a description and diagram thereof recorded in the office of the auditor of any county in this state as provided by law, and knowledge of the ownership of all such timber for the purpose of this act shall be conclusively presumed upon proof that said timber was properly marked, and that the description and diagram of marks had been theretofore duly recorded as aforesaid. [L. '01, p. 262, § 1; L. '60, p. 300, § 1; L. '63, p. 444, § 1; Cd. '81, § 3248.]

For former laws repealed by act of 1901, see Bal. Code, §§ 3135, 3291, 3292, 3293, 3294, 3295, 7126, and 7127.

See L. '83, p. 60, §§ 1, 2, special act applying to Whatcom and Snohomish counties, and L. '86, p. 117, § 1, adding Skagit and Island counties.

Special act in L. '79, p. 38, §§ 1—4, relating to Snake River.

"Act" in this section refers to §§ 8390—8394.

§ 8391. [7102.] Unlawful to Buy, When Fraudulently Marked.

It shall be unlawful for any person knowingly to purchase from anyone taking up any saw-logs, spars, piles, boom sticks, shingle bolts, hewn or other timber of value found adrift on any bay, harbor, river, stream, bayou, marsh, ditch or other waters in this state, that shall be marked with any mark or brand without permission of the owner thereof or his agent. [L. '01, p. 263, § 2.]

§ 8392. [7103.] Penalty.

Any person or persons violating any of the provisions of the two preceding sections shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding three hundred (\$300) dollars. [L. '01, p. 263, § 3.]

§ 8393. [7104.] Owner may Enter and Take—Penalty for Obstruction.

The owner of any such log, spar, pile, boom stick, shingle bolt or other timber of value who has a mark or brand recorded, as provided by law, or who claims ownership of or the right to possession of such logs, spars, piles, or other timber, by, through, or under a person having such recorded mark or brand may at any time lawfully, by himself or his agent enter in a peaceable manner into or upon any mill or mill boom, or raft of logs, spars, piles or other timber on any of the waters of this

state, in search of any such log, spar, pile, boom stick, shingle bolt or other timber, which he may have lost, and retake the same; and any person who shall willfully prevent or obstruct such search when such search is being made in good faith, or prevent the retaking of such log, spar, pile, boom stick, shingle bolt or other timber, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars. [L. '01, p. 263, § 4.]

§ 8394. [7105.] Liability for Wrongfully Taking up Branded Logs.

Any person or persons, or corporation who shall take up or cause to be taken up and manufactured into lumber or shingles, any saw-logs, piling, shingle bolt, or other timber of another, as provided in this act, which saw-log, piling, shingle bolt, or other timber, shall have been previously branded with the mark or marks of the owner or owners thereof, and the diagram and description of which shall have theretofore been duly recorded in the auditor's office of any county in this state as hereinbefore provided, without the permission or request of said owner, shall forfeit to the owner of said timber ten times the value thereof to be recovered in an action at law; and every employee or agent of the person, persons or corporation who shall aid or assist in taking up such timber, or who shall aid or assist in such manufacture, shall be jointly or severally liable with his principal for such penalty. [L. '01, p. 264, § 5.]

"Act" in this section refers to §§ 8390—8394.

CHAPTER IV.

TOLL LOGGING ROADS.

§ 8395. [7106.] Incorporation and Property Rights.

Any two or more persons may incorporate a company, having for its principal object the construction, maintenance, and operation of logging roads, chutes, flumes and artificial watercourses, or waterways and other ways, for the transportation of logs and other timber products. Such corporation shall have power to acquire, hold, use and transfer all such real and personal property as shall be reasonably necessary for carrying on the business of such corporation. [L. '05, p. 161, § 1.]

Cited in 62 Wash. 613, 614; 77 Wash. 546.

private purposes: State ex rel. Clark v. Superior Court, 62 Wash. 612, 114 Pac. 444.

This section is not invalid as conferring the power of eminent domain for

§ 8396. [7107.] Power to Construct and Operate Logging Roads, etc.

Such corporation shall have power to build, construct, maintain and operate logging roads, whether skid roads, railroads or any other kind, also chutes, flumes and artificial watercourses, waterways and other ways, for the transportation of logs or any other timber products, together with all necessary yarding grounds, rollways and landings. [L. '05, p. 161, § 2.]

§ 8397. [7108.] Duty as Carrier—Tolls, Right to Charge, and Lien for.

After any such logging road, way, chute, flume or artificial watercourse or other improvements shall have been constructed, such company shall transport all timber products offered to it for carriage as its means of transportation are adapted to carry, and such company shall have the right to charge reasonable tolls for the use thereof, which tolls shall be uniform, having due regard to the portion or length of any such logging road, way, chute, flume, or artificial watercourse or other improvements used by any person. Such company shall have a lien for the amount of its reasonable tolls and charges upon any and all logs or other timber products transported by it over its logging road, way, chute, flume or artificial watercourse. Notice of such lien shall be filed, and the same shall be enforced, in the same manner as is now or may hereafter be provided for the filing and enforcement of liens on logs by boom companies. [L. '05, p. 162, § 3.]

§ 8398. [7109.] Right of Eminent Domain.

Such companies shall be deemed quasi-public companies and common carriers, and any such company shall have the right of eminent domain and shall have the right to appropriate and condemn lands and property for its use. Such right of condemnation and of eminent domain shall be exercised in the same manner as is now, or may hereafter be, provided by law for the condemnation of property by ordinary railroad corporations exercising the right of eminent domain: Provided, that the right of eminent domain shall not be exercised by any such corporation with respect to any residence. And provided further, that any property acquired by such corporation under the provisions of this chapter by the exercise of the right of eminent domain shall be used exclusively for the purposes of this chapter; and whenever the use of such property as herein contemplated shall cease for the period of one year, the property shall revert to the original owner, his heirs or assigns. Nothing in this chapter shall be construed to authorize the taking or damaging of any power plant constructed or being constructed for the creation or utilization of water power. [L. 05, p. 162, § 4.]

Cited in 62 Wash. 613; 77 Wash. 546.

Logging road as public use supporting condemnation proceedings. 14

Ann. Cas. 906; Ann. Cas. 1918A, 203; L. R. A. 1917A, 102.

CHAPTER V.**BOOM COMPANIES.****§ 8399. [7110.] Appropriation of Property by Corporations Organized to Build Booms.**

Any corporation heretofore or hereafter organized in the state of Washington for the purpose of catching, booming, sorting, rafting, and holding logs, lumber, or other timber products, shall have power to acquire, hold, use, and transfer all such real and personal property or estate, by lease or purchase, as shall be necessary for carrying on the business of said corporation. If such corporation shall not be able to agree with persons owning land, shore rights, or other property sought to

be appropriated, as to the amount of compensation to be paid therefor, the compensation therefor may be assessed and determined and the appropriation made in the manner provided by law for the appropriation of private property by railways: Provided, that any property acquired under the provisions of this chapter by the exercise of the right of eminent domain shall be used exclusively for the purposes of this chapter, and whenever the use of said property as herein contemplated shall cease for a period of one year, the same shall revert to the original owner, his heirs or assigns, upon the repayment of the original cost of same. [L. '90, p. 470, § 1; 1 H. C., § 1590.]

See *infra*, §§ 8408—8415, which appear to be a supplemental act not intended to abrogate the provisions of this act.

See notes to §§ 8408, 8412.

Cited in 2 Wash. 9; 5 Wash. 645; 15 Wash. 140; 20 Wash. 150; 21 Wash. 466; 23 Wash. 89; 24 Wash. 136, 643; 27 Wash. 613; 32 Wash. 593; 40 Wash. 324, 327, 331; 44 Wash. 641, 642, 643; 79 Wash. 401; 82 Wash. 510.

Location of Site and Right to Maintain Boom: See Remington's Digest, Logs, § 16; Lownsdale v. Grays Harbor Boom Co., 21 Wash. 542, 58 Pac. 663; Shelton Log Co. v. Gosser, 26 Wash. 126, 66 Pac. 151; Samish Boom Co. v. Callvert, 27 Wash. 611, 68 Pac. 367; Niedmen Boom Co. v. North Shore etc. Co., 40 Wash. 315, 82 Pac. 412.

A boom company has a discretion as to the location of its boom site which cannot be controlled by the courts, in the absence of bad faith or legislative restriction: State ex rel. United Tanners Timber Co. v. Superior Court, 60 Wash. 193, 110 Pac. 1017.

DRIVING AND FLOATING: See Remington's Digest, Logs, §§ 5—10.

§ 5. Right to Use of Streams for Floatage: East Hoquiam Boom & Log Co. v. Neeson, 20 Wash. 142, 54 Pac. 1001; Watkins v. Dorris, 24 Wash. 636, 64 Pac. 840, 54 L. R. A. 199; Monroe Mill Co. v. Menzel, 35 Wash. 487, 77 Pac. 813, 102 Am. St. Rep. 905, 70 L. R. A. 272; Burrows v. Grays Harbor Boom Co., 44 Wash. 630, 87 Pac. 937; Lownsdale v. Grays Harbor Boom Co., 54 Wash. 542, 103 Pac. 833. See, also, Drainage District No. 3 v. Machias Mill Co., 104 Wash. 493, 177 Pac. 326.

§ 6. Use of Shores on Streams: Watkins v. Dorris, 24 Wash. 636, 64 Pac. 840, 54 L. R. A. 199; Monroe Mill Co. v. Menzel, 35 Wash. 487, 77 Pac. 813, 102 Am. St. Rep. 905, 70 L. R. A. 272.

§ 7. Sluice Dams and Artificial Freshets: Monroe Mill Co. v. Menzel, 35 Wash. 487, 77 Pac. 813, 102 Am. St. Rep. 905, 70 L. R. A. 272.

The floating of logs down a stream by means of dams and artificial freshets at a time of the year when it is not navigable in its natural state is an abuse of the right of navigation, for which an injunction will lie at the suit of riparian owners injured thereby: Matthews v. Belfast Mfg. Co., 35 Wash. 662, 77 Pac. 1046.

§ 8. Injuries Incident to Driving or Rafting: Watkinson v. McCoy, 23 Wash. 372, 63 Pac. 245; Gilson v. Cascade Lumber Co., 54 Wash. 289, 103 Pac. 11; St. Martin v. Skamania Boom Co., 79 Wash. 393, 140 Pac. 355.

§ 10. Negligence in Driving: Watkinson v. McCoy, 23 Wash. 372, 63 Pac. 245; Watkins v. Dorris, 24 Wash. 636, 64 Pac. 840, 54 L. R. A. 199; Ingram v. Wishkah Boom Co., 35 Wash. 191, 77 Pac. 34; Mitchell v. Lea Lumber Co., 43 Wash. 195, 86 Pac. 405, 10 Ann. Cas. 231, 9 L. R. A. (N. S.) 900; Burrows v. Grays Harbor Boom Co., 44 Wash. 630, 87 Pac. 937; Murray v. Wishkah Boom Co., 76 Wash. 605, 137 Pac. 130.

Actions, Defenses, Pleadings and Evidence: See Remington's Digest, Logs, §§ 11—13; Watkinson v. McCoy, 23 Wash. 372, 63 Pac. 245; Mitchell v. Lea Lumber Co., 43 Wash. 195, 86 Pac. 405, 10 Ann. Cas. 231, 9 L. R. A. (N. S.) 900; Monroe Mill Co. v. Menzel, 35 Wash. 487, 77 Pac. 813, 102 Am. St. Rep. 905, 70 L. R. A. 272; Sutherland & Brewer v. Lewis River Boom & Logging Co., 73 Wash. 75, 131 Pac. 455.

Injunction: See Remington's Digest, Logs, § 14; Watkinson v. McCoy, 23 Wash. 372, 63 Pac. 245; Mitchell v. Lea Lum. Co., 43 Wash. 195, 86 Pac. 405, 10 Ann. Cas. 231, 9 L. R. A. (N. S.) 900; Burrows v. Grays Harbor Boom Co., 44 Wash. 630, 87 Pac. 937.

Taking of property for booms and logging ways as a public purpose. 22 L. R. A. (N. S.) 151.

§ 8400. [7111.] To File Plat or Survey of Property Sought to be Appropriated.

Any corporation hereafter organized for the purpose mentioned in the last preceding section, shall within ninety days after its articles of incorporation have been filed, proceed to file in the office of the secretary of state a plat or survey of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for said purpose by said corporation. Any corporation heretofore organized in the territory of Washington for any of the purposes expressed in the last preceding section, shall file such plat within ninety days after the passage of this act. Such plat shall be made from the records of the United States in the surveyor general's office of this state, or by competent surveyor, subsequent to actual survey. Such corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in such original plat, or any portion of such streams, or in any manner to change, modify or correct its original plat, file additional plats or surveys in the office of the secretary of state, of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for said purposes by said corporation, and whenever by reason of floods or otherwise, the channel of any stream shall be so changed as to put such stream beyond the limits of said original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, such corporation may file in the office of the secretary of state additional plats or surveys showing the change in said channel and so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for said purposes by said corporation which shall vest it with the same rights that it acquired by the filing of said original plat. [L. '90, p. 470, § 2; 1 H. C., § 1591; L. '07, p. 76, § 1.]

"This act" refers to §§ 8399—8407.

Cited in 32 Wash. 598; 37 Wash. 203; 44 Wash. 641, 642; 48 Wash. 284; 82 Wash. 515.

The filing of a plat of its proposed location by a boom company desiring to appropriate the waters of a stream does not give the boom company the right to injure the property of riparian proprietors without condemnation and compensation, in view of section 8399, *supra*: *St. Martin v. Skamania Boom Co.*, 79 Wash. 393, 140 Pac. 355.

This section is a grant, by necessary implication, of the power of selecting the designated location by condemnation or otherwise: *Samish River Boom Co. v. Union Boom Co.*, 32 Wash. 586, 73 Pac. 670.

Where a boom company's plat was made from the government field-notes of the meanders of a river, and shows the

contiguous land, it is sufficient to authorize condemnation proceedings to appropriate the use of an unmeandered slough extending into such contiguous lands, within this section: *State ex rel. Burrows v. Superior Court*, 48 Wash. 277, 93 Pac. 423, 125 Am. St. Rep. 927, 17 L. R. A. (N. S.) 1005.

The fact that a boom company, in order to initiate its appropriation, filed its map and survey in 1891, as required by this section does not prevent the condemnation of a portion of its property by a rival boom company, where for twenty years the first company had made no use of more than one-tenth part of its appropriated shore rights, and there was no evidence that it would require the use of more than it had improved: *State ex rel. Washington Boom Co. v. Chehalis Boom Co.*, 82 Wash. 509, 144 Pac. 719.

§ 8401. [7112.] Boom Structures, Power to Build, etc.

Such corporations shall have power and are hereby authorized, in any of the waters of this state or the dividing waters thereof, to con-

struct, maintain and use all necessary sheer or receiving booms, dolphins, piers, piles or other structure necessary or convenient for carrying on the business of such corporations: Provided, that such boom or booms, sheer booms or receiving booms shall be so constructed as to allow the free passage between any of such booms and the opposite shore for all boats, vessels or steam crafts of any kind whatsoever, or for ordinary purposes of navigation. [L. '90, p. 471, § 3; 1 H. C., § 1592.]

See notes to § 8399, *supra*.

See *supra*, § 2658, malicious injury to booms.

See *supra*, § 8002, lease of tide lands for booming purposes.

Cited in 44 Wash. 641, 642.

§ 8402. [7113.] Collection of Tolls—Duty of Corporation—Lien.

After such works shall have been constructed, such corporation shall catch, hold and assort the logs and timber products of all persons requesting such service, upon the same terms and without discrimination; and shall have the right, in consideration of the convenience and security afforded to the public in the handling of logs and timber products, to charge and collect tolls on all logs or other timber products caught within their works and upon the order or request of the owner or owners thereof, and there assorted, boomed or rafted; said tolls shall not exceed seventy-five cents per thousand feet on logs, spars or other large timber, and reasonable rates on all other timber products: Provided, that it shall be the duty of any corporation operating a boom at the mouth of any river, to catch and hold, assort, boom and raft all logs and timber products, except such as may be already in charge of its owner or his agents, without request of the owner or owners, and shall have the right to charge and collect tolls not to exceed seventy-five cents per thousand feet for such service. The amount of logs or timber is to be board measure, to be ascertained by the usual legal method of scaling; and such corporation shall have a lien upon the logs and timber products for the driving, floating, booming, sorting and rafting thereof, and the right to enforce such liens in any manner provided or that may be provided by law for the enforcement of liens upon personal property. Such corporation shall, as soon as practicable, deliver logs or other timber products caught within their booms, sorted and rafted ready for towing, to the owner or owners thereof, and if required to hold such property for more than thirty days, shall have the right to charge a reasonable rate for such storage for the period of excess. [L. '90, p. 471, § 4; 1 H. C., § 1593.]

Cited in 5 Wash. 646; 40 Wash. 328—333; 82 Wash. 510.

§ 8403. [7114.] Duty as to Assorting Logs, etc.

It shall be the duty of all said boom corporations, in assorting, to separate the logs, lumber, or other timber products, into separate booms ready for towing, so that logs or other timber products shall go to the mill or place intended for use or storage, in one or more booms: Provided, that in case more than one boom is located on or in the same river or its tributaries, the corporation owning the upper boom or works shall pass, free of charge, all saw-logs or other timber products consigned to the lower boom or booms. [L. '90, p. 472, § 5; 1 H. C., § 1594.]

§ 8404. [7115.] Record of Assorted Rafts to be Kept, and to Show What.

It shall be the duty of every corporation organized and transacting business under the provisions of this chapter to keep, in the office of its secretary, open to public inspection, a book or books in which shall be truly recorded the facts, so far as known, regarding each and every raft by it assorted. Such record shall specify—

1. Names of owners;
2. Marks or brands;
3. Number of logs in each boom;
4. Number of feet in boom;
5. Name of steamer receiving possession;
6. Date of departure from boom. [L. '90, p. 472, § 6; 1 H. C., § 1595.]

§ 8405. [7116.] Liability for Loss of Logs, Neglect, etc.

Corporations organized in accordance with the provisions of this act shall be liable to the owner or owners of logs or other timber products for all loss or damage resultant from neglect, carelessness, or unnecessary delay on the part of servants of such corporations: Provided, that loss caused by fire and ice, which cannot be reasonably guarded against, shall not be construed as resultant upon neglect or carelessness on the part of the corporation. [L. '90, p. 472, § 7; 1 H. C., § 1596.]

"This act" refers to §§ 8399—8407.

See notes to § 8399, *sunra*.

Cited in 5 Wash. 647; 40 Wash. 329.

§ 8406. [7117.] Additional Liability for Neglect to Assort and Deliver Logs.

In addition to such damages as are herein provided for, any corporation willfully neglecting to assort and deliver such logs and timber products according to the provisions of this act, it shall be liable to a fine not exceeding twenty per centum of the value of such property which it shall have failed to deliver, but no such corporation shall be liable to such damages or penalty if said owner or owners of such logs or timber products shall have failed to furnish the necessary boom sticks and chains to raft the same. [L. '90, p. 472, § 8; 1 H. C., § 1597.]

"This act" refers to §§ 8399—8407.

Cited in 5 Wash. 647.

§ 8407. [7118.] Public Highways and Corporations, What Declared to be.

All meandered rivers, meandered sloughs, and navigable waters in this state shall be deemed as public highways, and said corporations shall be declared public corporations for the purpose of this act; and the improvement of such streams, sloughs, and waters shall be deemed and declared a public use and benefit. [L. '90, p. 473, § 9; 1 H. C., § 1598.]

"This act" refers to the preceding sections of this chapter.

Cited in 44 Wash. 641, 642.

§ 8408. [7119.] How Organized, and Powers of.

Any corporation having for its object, in whole or in part, the clearing out and improvement of rivers and streams in this state, and for the

purpose of driving, sorting, holding and delivering logs and other timber products thereon, may be organized under the laws of this state, and in accordance with the provisions of Chapter I, of Title XXV of this code, and such corporations shall have all powers and be subject to all the liabilities and duties therein mentioned. [L. '95, p. 128, § 1.]

Reference to this code substituted for reference to Hill's Code.

See supra, § 8363 et seq., scaling and measuring logs.

See supra, § 8381 et seq., marking and driving logs.

Cited in 13 Wash. 617; 20 Wash. 148; 613; 44 Wash. 642, 643; 48 Wash. 287; 21 Wash. 543; 24 Wash. 645; 27 Wash. 76 Wash. 608.

§ 8409. [7120.] Power to Acquire Property—Eminent Domain.

Such corporation shall have power to acquire, hold, use and transfer all such real and personal property or estate, by lease or purchase, as shall be necessary for carrying on the business of said corporation. If such corporation shall not be able to agree with persons owning land, shore rights or other property sought to be appropriated, as to the amount of compensation to be paid therefor, the compensation therefor may be assessed and determined and the appropriation thereof be made in the manner provided by law for the appropriation of private property in Chapter V of Title VI (§ 921 et seq.): Provided, that any property acquired under the provisions of this act for the purposes herein mentioned by the exercise of the right of eminent domain shall be used exclusively for the purposes aforesaid; and whenever the use of said property acquired by the right of eminent domain, as herein contemplated, shall cease for a period of one year, the same shall revert to the original owner, his heirs or assigns. [L. '95, p. 129, § 2.]

"Act" in this section refers to §§ 8408—8415.

Cited in 40 Wash. 331; 48 Wash. 287, 289, 618; 82 Wash. 510.

A remonstrance does not affect the company's power to condemn a right to maintain splash-dams some miles up the

river above the lands of the remonstrancers, as none of their "lands or sloughs" are sought to be appropriated: State ex rel. Burrows v. Superior Court, 48 Wash. 286, 93 Pac. 426.

§ 8410. [7121.] Plats of Shore Lines, When Filed.

Any corporation organized for the purposes mentioned in section 8408 shall within ninety days after its articles of incorporation shall have been filed, proceed to file in the office of the secretary of state a plat or survey of so much of the shore lines of the waters of the state or of any of the rivers or streams thereof and lands contiguous thereto as are proposed to be appropriated for such purposes by said corporation. Such plat shall be made from the records of the United States in the office of the surveyor-general of this state, or by a competent surveyor, after actual survey, from the notes thereof, and wherever such appropriation is made upon unsurveyed lands, then by an actual survey made by a competent surveyor. Such corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in such original plat, or any portion of such streams, file additional plats in the office of the secretary of state, and whenever by reason of floods or otherwise, the channel of any stream shall be so

changed as to put such streams beyond the limits of said original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, such corporation may file in the office of the secretary of state supplemental plats showing the change in said channel which shall vest it with the same rights that it acquired by the filing of said original plat. [L. '95, p. 129, § 3; L. '05, p. 232, § 1.]

Cited in 48 Wash. 287; 57 Wash. 74, 76.

This section does not prevent a company from condemning the right to damage by artificial freshets lower lands outside of the plat, where the company was not seeking to improve the river or exercise its granted powers at the point where the injury occurs; as the object of the act was that of notice to riparian

owners where the improvements were to be made: State ex rel. Gray's Harbor Boom Co. v. Superior Court, 57 Wash. 71, 106 Pac. 481.

"Contiguous lands" in this section is not to be restricted to lands "next to" or "touching" the river: State ex rel. Gray's Harbor Boom Co. v. Superior Court, 57 Wash. 71, 106 Pac. 481.

§ 8411. [7122.] General Powers and Duties—Abutting Owners may Remonstrate.

Such corporation shall have power and is hereby authorized in any of the rivers and streams of this state, or the dividing waters thereof, to remove jams, roots, snags and rocks, improve and straighten the channel, build wing dams and sheer booms, construct dams and gates, or otherwise, for the purpose of storing water with which to produce artificial freshets and for the purpose of holding logs and other timber products and in all ways to improve such streams and rivers for the purposes herein mentioned and contemplated. Provided, that no such wing dam, sheer boom, dam with gate or otherwise, shall be so constructed, maintained or used as to in any manner obstruct or impede the outlet of such stream: And provided further, that if any such wing dam, sheer boom, dam with gate or otherwise shall be so constructed, maintained or used as to interfere with the use for any purpose of the waters of any stream, so dam [dammed] or used, or any of its tributaries, or in any manner to injure or damage any lands adjacent to such stream or its tributaries, compensation for such interference with the use of such water and for any such injury or damage shall be first assessed and determined and the appropriation thereof may be made by the exercise of the power of eminent domain in the manner provided in section 8409: Provided, however, that whenever the owners of more than one-half of the land lying alongside or abutting on any stream affected by the tide, proposed to be improved according to this act, shall file with the board of county commissioners of the county in which said river is situated a remonstrance against any improvements of so much of the stream as is affected by the tide, it shall then be unlawful for any corporation to take the land or any slough within the territory owned by any such remonstrancers: Provided, that such remonstrance shall be filed with said board within fifteen days from the filing of said plat. Nothing in this act shall be construed to authorize the taking or damaging of any power plant constructed or being constructed for the creation or utilization of water power. [L. '95, p. 129, § 4; L. '97, p. 39, § 1; L. '05, p. 108, § 1.]

"Act": See notes to §§ 8399, 8409, *supra*.

Cited in 13 Wash. 620; 44 Wash. 643, 644; 48 Wash. 287, 289; 58 Wash. 568.

This section by necessary implication gives the right to obstruct restricted

navigation in small streams at times, where such use is necessarily an exclusive one; and such obstruction would not fall within the general statutes defining nuisances, or to be a valid objection to emi-

nent domain proceedings to condemn the right to overflow lands: *State ex rel. Pealer v. Superior Court*, 58 Wash. 565, 109 Pac. 340.

§ 8412. [7123.] Rights of Owners of Timber—Tolls—Liens.

After such corporation shall have entered upon its duties, which shall be within three months of the filing of its maps of location, such corporation shall come in streams theretofore navigable, upon the request of the owners, and in case of logs and other timber products being commingled, or lying in such a position as to obstruct or impede the drive, without such request: Provided, that when a navigable stream upon which it was not previously practicable to float logs or other timber products is improved by clearing out rocks, straightening the channel, or the construction of wing dams and sheers by the corporation having a charter thereon, and thereby aiding and assisting the floating of logs and other timber products, a corporation shall be entitled to driving charges on all such logs or other timber products placed in said stream without request to drive the same, and in streams not navigable before such improvements were made, without request, sluice, sack and drive all logs and other timber products of suitable length that may be placed in the beds of the stream improved as aforesaid, or that may be delivered into its ponds, and shall handle all such logs and other timber products of all persons upon the same terms, without discrimination as to time of sluicing, sacking and driving such logs, or other timber products, and shall be entitled to charge and collect reasonable and uniform tolls for such services and improvements, on all logs and other timber products so handled, or sheered out of sloughs or off of bars by means of such improvements; such tolls shall not exceed one dollar per thousand feet, board measure, on logs, spars, or other large timber, and reasonable compensation on all other timber products, for the use of such improvements, and for sluicing, sacking and driving the same, such charges to be fixed by the board of trustees of such corporation in proportion to the distance such timber is to be driven and the number of dams through which the same is necessarily sluiced or sheered, and in case any such corporation shall be engaged in the booming and rafting of logs and other timber so sluiced, sacked and driven, an additional sum not to exceed sixty cents per thousand feet for logs, spars and other large timber, and reasonable compensation on all other timber products may be charged for booming and rafting the same; the amount of such logs and other products is to be determined by the usual method of scaling, and such corporation shall have a lien upon all logs and other timber products handled for sluicing, sacking and driving, and for booming and rafting the same, to be enforced in any manner now or hereafter provided by law for the enforcement of liens for labor on logs. [L. '95, p. 1230, § 5; L. '01, p. 295, § 1; L. '09, p. 816, § 1.]

Cited in 20 Wash. 145; 21 Wash. 467; 23 Wash. 90; 71 Wash. 554; 88 Wash. 570; 89 Wash. 283.

This section is constitutional: *East Hoquiam Boom etc. Co. v. Neeson*, 20 Wash. 142, 54 Pac. 1001.

Tolls and Charges: See *Remington's Digest*, Logs, § 17; *East Hoquiam Boom etc. Co. v. Neeson*, 20 Wash. 142, 54 Pac. 1001; *Grays Harbor Boom Co. v. McAmman*, 21 Wash. 465, 58 Pac. 573; *Washougal River Imp. etc. Co. v. Ska*

mania Log. Co., 23 Wash. 89, 62 Pac. 450; Grays Harbor Boom Co. v. Lytle Log. etc. Co., 36 Wash. 151, 78 Pac. 795; Franck v. Pittock & Leadbetter Lumber Co., 67 Wash. 533, 122 Pac. 7; Wishkah Boom Co. v. Greenwood Timber Co., 88 Wash. 568, 153 Pac. 367; Dufur v. Lewis River Boom & Logging Co., 89 Wash. 279, 154 Pac. 463.

Action to Enforce Payment of Charges: See Remington's Digest, Logs, § 19; Cascade Boom Co. v. McNeeley Log. Co., 37 Wash. 203, 79 Pac. 793; Grays Harbor Boom Co. v. Lytle Log. etc. Co., 38 Wash. 88, 80 Pac. 271; North Shore Boom & Driving Co. v. Nicomen Boom Co., 52 Wash. 564, 101 Pac. 48.

§ 8413. [7124.] Damages.

Any corporation acting under and in accordance with the provisions of this act shall be liable to the owner or owners of logs or other timber products for all loss or damage resulting from neglect, carelessness or unnecessary delay on the part of such corporation or its agents. [L. '95, p. 131, § 6.]

"Act" refers to §§ 8408—8415.

Cited in 76 Wash. 608.

Liabilities of Proprietors of Booms for Loss of Logs: See Remington's Digest, Logs, § 20; Tingley v. Bellingham Bay Co., 5 Wash. 644, 32 Pac. 737, 33 Pac. 1055; Dufur v. Lewis River Boom & Logging Co., 89 Wash. 279, 154 Pac. 463.

A boom and driving company controlling the driving of logs on a stream by

splash-dams, owes the duty as a public service corporation to drive the logs with reasonable care and diligence, and is by this section made liable for logs lost through neglect or unnecessary delay; hence the jury is properly instructed that a driving company is liable for logs lost by fire through unreasonable delay in driving them: Murray v. Wishkah Boom Co., 76 Wash. 605, 137 Pac. 130.

§ 8414. [7125.] Rights to Cease, When.

Should any corporation neglect, for the period of eight months after improving any stream or river, to operate its dams, or to otherwise perform its duties as herein provided, then all rights herein conferred to such corporations upon such streams or rivers, or portions thereof, shall cease. [L. '95, p. 131, § 7.]

Cited in 47 Wash. 401.

§ 8415. [7126.] Boom Companies, Rights of.

Duly organized boom companies at present operating upon any of the streams or rivers of this state may file amended articles of incorporation to embrace the provisions of this act, and, for the purpose of time limitations mentioned in this act, the time of filing such amended articles of incorporations shall be deemed to be the time of organization thereof, but failure to comply with the provisions of this act shall work forfeiture of the rights of such corporations only so far as the same are subjoined under the provisions of this paragraph. [L. '95, p. 131, § 8.]

"Act" refers to §§ 8408—8415.

Cited in 44 Wash. 643, 644.

TITLE LVI.

LOST AND UNCLAIMED PROPERTY.

- | | |
|------------------------------------------------------------------|---------------------------------------------------------------|
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| 8417. Notice to owner, how given. | 8428. Perishable property, how sold. |
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| 8423. Return of order and inventory. | 8434. Liability for failure to give notice. |
| 8424. Disposition of proceeds of sale. | 8435. Disposal of unclaimed moneys by public officers. |
| 8425. Duties of treasurer. | 8436. How state treasurer shall dispose of such moneys. |
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§ 8416. [7127.] Consignee of Personal Property to Keep Record.

Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him a description of such property, with the date of reception thereof. [L. '54, p. 383, § 1; L. '63, p. 437, § 1; Cd. '81, § 3252; 1 H. C., § 2825.]

§ 8417. [7128.] Notice to Owner, How Given.

If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in a postoffice, of the reception of such property. [L. '54, p. 383, § 2; L. '63, p. 438, § 2; Cd. '81, § 3253; 1 H. C., § 2826.]

§ 8418. [7129.] Sale After One Year if not Claimed.

If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same, in the manner provided in this chapter. [L. '54, p. 384, § 3; L. '63, p. 438, § 3; Cd. '81, § 3254; 1 H. C., § 2827.]

§ 8419. [7130.] Notice of Intent to Sell, How Given.

Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of

the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the state; the last publication of such notice shall be at least eighteen days previous to the time of sale. [L. '54, p. 384, § 4; L. '63, p. 438, § 4; Cd. '81, § 3255; 1 H. C., § 2828.]

§ 8420. [7131.] Procedure—Affidavit to be Filed With Justice of the Peace.

If the owner or person entitled to such property shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. [L. '54, p. 384, § 5; L. '63, p. 438, § 5; Cd. '81, § 3256; 1 H. C., § 2829.]

§ 8421. [7132.] Justice to Make Inventory and Order Sale.

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be sold by any constable of the precinct where the same shall be, at public auction. [L. '54, p. 384, § 6; L. '63, p. 438, § 6; Cd. '81, § 3257; 1 H. C., § 2830.]

§ 8422. [7133.] Notice of Sale, How Given.

It shall be the duty of such constable receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from justices' courts. [L. '54, p. 384, § 7; L. '63, p. 439, § 7; Cd. '81, § 3258; 1 H. C., § 2831.]

§ 8423. [7134.] Return of Order and Inventory.

Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory and the proceeds of sale, after deducting his fees. [L. '54, p. 384, § 8; L. '63, p. 439, § 8; Cd. '81, § 3259; 1 H. C., § 2832.]

§ 8424. [7135.] Disposition of Proceeds of Sale.

From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall

be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person. [L. '54, p. 384, § 9; L. '63, p. 439, § 9; Cd. '81, § 3260; 1 H. C., § 2833.]

§ 8425. [7136.] Duties of Treasurer.

The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement, so delivered to him by the justice. [L. '54, p. 385, § 10; L. '63, p. 439, § 10; Cd. '81, § 3261; 1 H. C., § 2834.]

§ 8426. [7137.] Claim by Owner for Proceeds of Sale.

If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. [L. '54, p. 385, § 11; L. '63, p. 439, § 11; Cd. '81, § 3262; 1 H. C., § 2835.]

§ 8427. [7138.] After Five Years to be Applied to School Fund.

If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and shall be applied to the common school fund of said county. [L. '54, p. 385, § 12; L. '63, p. 439, § 12; Cd. '81, § 3263; 1 H. C., § 2836.]

§ 8428. [7139.] Perishable Property, How Sold.

Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted and the proceeds of the same to be applied in the manner before provided in this title: Provided, that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section 8421. [L. '54, p. 385, § 13; L. '63, p. 439, § 13; Cd. '81, § 3264; 1 H. C., § 2837.]

§ 8429. [7140.] Officers' Fees.

The fees allowed to any justice of the peace, under the provisions of this title, shall be three dollars for each days' service; and to any constable, the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property. [L. '54, p. 385, § 14; L. '63, p. 440, § 14; Cd. '81, § 3265; 1 H. C., § 2838.]

§ 8430. [7141.] Lost Money and Goods—Finder to Give Notice.

If any person shall find any money or goods of the value of five dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof in writing, to the clerk of the board of county commissioners of the

county in which such property was found, and shall also, within said five days, cause a notice thereof to be posted up in two public places in said county. [L. '54, p. 382, § 10; L. '63, p. 440, § 15; Cd. '81, § 3266; 1 H. C., § 2839.]

§ 8431. [7142.] Publication of Notice by Finder.

Every finder of lost goods of the value of ten dollars or more shall, in addition to the requirements of the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein, and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same, who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, [procure an appraisal thereof by a justice of the peace of his county], which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of county commissioners of such county. [L. '54, p. 382, § 11; L. '63, p. 440, § 16; Cd. '81, § 3267; 1 H. C., § 2840.]

§ 8432. [7143.] Owner may Recover Within One Year.

If the owner of such lost money or goods appear within one year after notice given to the clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same, or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble. [L. '54, p. 382, § 12; L. '63, p. 440, § 17; Cd. '81, § 3268; 1 H. C., § 2841.]

§ 8433. [7144.] After One Year, Finder to Pay Half to County Treasurer.

If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half the value thereof, after deducting all legal charges, to the treasurer of the county, for school purposes; and in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer, in the name of the county, for school purposes. [L. '54, p. 382, § 13; L. '63, p. 440, § 18; Cd. '81, § 3269; 1 H. C., § 2842.]

§ 8434. [7145.] Liability for Failure to Give Notice.

If any finder of lost money or goods, of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this title, he shall be liable for the full value of such money or goods, one-half to the use of the county for school purposes, and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods. [L. '54, p. 383, § 14; L. '63, p. 440, § 19; Cd. '81, § 3270; 1 H. C., § 2843.]

§ 8435. [7146.] Disposal of Unclaimed Moneys by Public Officers.

Whenever any money may be or come into the possession of any public officer, as such, to which, as such, said officer has no right, or to which he shall cease as such officer to have any right, and no other person has

or appears to have any right or claim thereto, and no provision is made by law for the disposal of such money, otherwise than as provided by this title, such public officer shall pay such money to the state treasurer and take his receipt therefor, and such receipt shall fully protect such officer so paying the same in any suit or action in relation thereto. [L. '91, p. 133, § 1; 1 H. C., § 2880.]

See supra, § 4016 et seq., and notes.

§ 8436. [7147.] How State Treasurer shall Dispose of Such Moneys.

The state treasurer shall add all money received by virtue of the provisions of this title to the permanent school fund, and the same shall be and constitute a part of such fund. [L. '91, p. 133, § 2; 1 H. C., § 2881.]

See supra, § 1341, subd. 8, and notes, escheat of estates for want of descendants.

See supra, § 8427, proceeds of sale of lost property escheated to school fund.

Lumber. See "Logs and Logging."

Liens on, see § 1163.

Magistrates. See §§ 50, 51.

Majority. Age of, see "Real Property," § 10548.

In probate code, see § 1572.

Mandamus. See § 1013.

Marketing Farm Products. See "Agriculture," § 2875.

Marks and Brands. See "Animals," § 3051; "Logs," § 8381.

TITLE LVII.

MARRIAGE.

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§ 8437. [7150.] Who may Contract.

Marriage is a civil contract which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years, who are otherwise capable. [Cf. L. '54, p. 404, §§ 1, 5; L. '66, p. 81, § 1; Cd. '81, § 2380; 1 H. C., § 1381.]

See supra, § 2153, proof of marriage in certain cases.

See supra, § 2483, compelling marriage under threats.

See supra, § 5825, agreements in consideration of, void.

Cited in 72 Wash. 375; 80 Wash. 616—
 624.

Nature of the Obligation: See Remington's Digest, Marriage, § 1; Maynard v. Hill, 2 W. T. 321, 5 Pac. 717.

What Law Governs: See Remington's Digest, Marriage, § 2; Wilbur's Estate v. Bingham, 8 Wash. 35, 35 Pac. 407, 40 Am. St. Rep. 886; Willey v. Willey, 22 Wash. 115, 60 Pac. 145, 79 Am. St. Rep. 923; Johnson v. Johnson, 57 Wash. 89, 106 Pac. 500, 26 L. R. A. (N. S.) 179.

Common-law Requisites: See Remington's Digest, Marriage, § 3; McLaughlin's Estate, In re, 4 Wash. 570, 30 Pac. 651, 16 L. R. A. 699; Smith's Estate, In re, 4 Wash. 702, 30 Pac. 1059, 17 L. R. A. 573; Kelley v. Kitsap County, 5 Wash. 521, 32 Pac. 554; Wilbur's Estate v. Bingham, 8 Wash. 35, 35 Pac. 407, 40 Am. St. Rep. 886.

Indian Customs: See Remington's Digest, Marriage, § 4; Kelley v. Kitsap County, 5 Wash. 521, 32 Pac. 554; Wilbur's Estate, In re, 14 Wash. 242, 44 Pac. 262.

Persons Who may Marry—Divorced or Separated Persons: See Remington's Digest, Marriage, § 5; State v. Fenn, 47

Wash. 561, 92 Pac. 417, 17 L. R. A. (N. S.) 800; Smith's Estate, In re, 4 Wash. 702, 30 Pac. 1059, 17 L. R. A. 573; Cushman v. Cushman, 80 Wash. 615, 142 Pac. 26, L. R. A. 1916C, 732; Peerless Pacific Co. v. Burckhard, 90 Wash. 221, 155 Pac. 1037, Ann. Cas. 1918B, 247, L. R. A. 1917C, 353.

A marriage within the six months prohibited by the divorce, outside of the jurisdiction where the parties went for that purpose and immediately returning without intent to change their domicile, is void: Knoll v. Knoll, 104 Wash. 110, 176 Pac. 22.

Age: See Remington's Digest, Marriage, § 6; Hollopeter, In re, 52 Wash. 41, 100 Pac. 159, 132 Am. St. Rep. 952, 17 Ann. Cas. 91, 21 L. R. A. (N. S.) 847.

The common-law age of consent is not changed by this section: Cushman v. Cushman, 80 Wash. 615, 142 Pac. 26.

Consanguinity or Affinity: See Remington's Digest, Marriage, § 7; State v. Nakashima, 62 Wash. 686, 114 Pac. 894, Ann. Cas. 1912D, 220.

Capacity of deaf and dumb person to contract marriage. Ann. Cas. 1913B, 1240.

§ 8438. [7151.] Marriages Prohibited in Certain Cases—Consanguinity, etc.

Marriages in the following cases are prohibited:

1. When either party thereto has a wife or husband living at the time of such marriage;

2. When the parties thereto are nearer of kin to each other than second cousins, whether of the whole or half blood, computing by the rules of the civil law;

3. It shall be unlawful for any man to marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son; and if any person being within the degrees of consanguinity or affinity in which marriages are prohibited by this section carnally know each other, they shall be deemed guilty of incest, and shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years and not less than one year. [Cf. L. '54, p. 96, § 115; L. '66, p. 81, § 2; Cd. '81, § 949; 2 H. P. C., § 197.]

See L. '55, p. 36, §§ 1, 2, penalty for intermarriage between whites and negroes.

Cited in 57 Wash. 90; 62 Wash. 687, 688; 86 Wash. 461—464; 111 Wash. 289. incest: State v. Bielman, 86 Wash. 460, 150 Pac. 1194.

This section is not impliedly repealed by § 2455, defining incest, or by §§ 8440, 8451, 8452, *infra*; State v. Nakashima, 62 Wash. 686, 114 Pac. 894, Ann. Cas. 1912D, 220.

This section is repealed, so far as incest is concerned, by the Penal Code, § 2304, *infra*, in view of § 2455, *infra*, defining

A marriage between first cousins and contracted outside the state, in evasion of this section, is void: Johnson v. Johnson, 57 Wash. 89, 106 Pac. 500.

Marriage within prohibited degrees of relationship as void or voidable. 1 Ann. Cas. 613; Ann. Cas. 1917C, 151; L. R. A. 1916C, 723.

§ 8439. [7152.] Same—Age of Griminal or Diseased Persons, etc.

No woman under the age of forty-five years, or man of any age, except he marry a woman over the age of forty-five years, either of whom is a common drunkard, habitual criminal, epileptic, imbecile, feeble-minded person, idiot or insane person, or person who has theretofore been afflicted with hereditary insanity, or who is afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, shall hereafter intermarry or marry any other person within this state. [L. '09, p. 633, § 1; L. '09, Ex. Sess., p. 53, § 1.]

See *infra*, § 8452, penalty for violating this section.

Cited in 62 Wash. 688.

§ 8440. [7153.] Solemnization Prohibited.

No clergyman or other officer authorized by law to solemnize marriages within this state shall hereafter knowingly perform a marriage ceremony uniting persons in matrimony either of whom is an epileptic, imbecile, feeble-minded person, common drunkard, idiot, insane person, or

person who has theretofore been afflicted with hereditary insanity, habitual criminal, or person afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, unless the female party to such marriage is over the age of forty-five years. [L. '09, p. 634, § 2; L. '09, Ex. Sess., p. 53, § 2.]

See *infra*, § 8452, penalty for violating this section.

Cited in 62 Wash. 688.

§ 8441. [7154.] Who may Solemnize.

The following named officers and persons are hereby authorized to solemnize marriages, to wit: judges of the supreme court, judges of the superior courts, any regularly licensed or ordained minister or any priest of any church or religious denomination anywhere within the state, and justices of the peace within their respective counties. [L. '13, p. 92, § 1. Cf. L. '54, p. 404, § 4; L. '66, p. 82, § 4; Cd. '81, § 2382; L. '83, p. 43, § 1; L. '90, p. 98, § 1; 1 H. C., § 1382.]

See last preceding section.

See *infra*, § 8454, penalty for unlawful solemnization of marriage.

See *infra*, § 8448, marriage celebrated according to ritual.

Cited in 54 Wash. 155.

A marriage ceremony performed by an Indian chief who was a Christian of the Presbyterian faith, assuming to have au-

thority to unite people in marriage, is valid: *Weatherall v. Weatherall*, 56 Wash. 344, 105 Pac. 822.

§ 8442. [7155.] Marriage by Unauthorized Person—Effect of.

A marriage solemnized before any person professing to be a minister or a priest of any religious denomination in this state, or professing to be an authorized officer thereof, is not void, nor shall the validity thereof be in any way affected on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Illegitimate children become legitimate by the subsequent marriage of their parents with each other. [Cf. L. '54, p. 405, § 6; L. '66, p. 83, § 10, pt. of § 11; Cd. '81, § 2388; 1 H. C., § 1383.]

Cited in 56 Wash. 351.

Illegal Marriage, Liabilities of Parties: See Remington's Digest, Marriage, § 14-1; *Larson v. McMillan*, 99 Wash. 626, 170 Pac. 324.

Effect of Informal or Invalid Marriage: See Remington's Digest, Marriage, § 15; *Wilbur's Estate v. Bingham*, 8 Wash. 35, 35 Pac. 407, 40 Am. St. Rep. 886; *Sloan's Estate, In re*, 50 Wash. 86, 96 Pac. 684, 17 L. R. A. (N. S.) 960.

§ 8443. [7156.] Form of Solemnization.

In the solemnization of marriage no particular form is required, except that the parties thereto shall assent or declare, in the presence of the minister, priest, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife. [L. '66, p. 82, § 5; Cd. '81, § 2383; 1 H. C., § 1384.]

Cited in 56 Wash. 351.

Marriage by Cohabitation and Reputation: See Remington's Digest, Marriage, § 8; *Stans v. Baitey*, 9 Wash. 115, 37 Pac. 316.

A presumption of lawful marriage from

holding out and cohabitation cannot be indulged where the proofs show that the parties, unable to speak or read English, relied upon applications and affidavits for a marriage license which they paid for and supposed constituted a lawful mar-

riage, no license ever having been issued or ceremony performed: *Meton v. Industrial Insurance Department*, 104 Wash. 652, 177 Pac. 696.

Residence and cohabitation in a state where common-law marriages are recognized, after a former wife had obtained a divorce, does not legalize the prior void marriage of the husband or rebut the presumption of a continuance of the illicit relation, where neither of the parties knew of the divorce and their resi-

dence in such state was not permanent: *Blodgett v. Blodgett*, 109 Wash. 597, 187 Pac. 340.

Solemnization or Celebration — Customs of Particular Sects or Societies: *Weatherall v. Weatherall*, 56 Wash. 344, 105 Pac. 822.

Fraud: *Hollopeter, In re*, 52 Wash. 41, 100 Pac. 159, 132 Am. St. Rep. 952, 17 Ann. Cas. 91, 21 L. R. A. (N. S.) 847.

§ 8444. [7157.] Marriage Certificate, Contents of.

The person solemnizing a marriage shall give to each of the parties thereto, if required, a certificate thereof, specifying therein the names and residence of the parties, and of at least two witnesses present, the time and place of such marriage, and the date of the license thereof, and by whom issued. [L. '66, p. 82, § 6; Cd. '81, § 2384; 1 H. C., § 1385.]

§ 8445. [7158.] Certificate, Delivery of—Form.

A person solemnizing a marriage shall, within three months thereafter, make and deliver to the judge of the superior court [county clerk] of the county where the marriage took place a certificate containing the particulars specified in the last section, which said certificate may be in the following form:—

State of Washington, }
County of ——. }

This is to certify that the undersigned, a —, by authority of a license bearing date — day of —, A. D. 18—, and issued by the county auditor of the county of —, did, on the — day of —, A. D. 18—, at the house of —, in the county and state aforesaid, join in lawful wedlock A B, of the county of —, of the —, and C D, of the county of —, of the —, with their mutual assent, in the presence of F H and E G, witnesses.

Witness my hand. [Cf. L. '54, p. 405, § 7; L. '66, p. 82, § 7; Cd. '81, § 2385; 1 H. C., § 1386.]

§ 8446. [7159.] Record of Marriages.

The judge of the superior court [county clerk] shall file such certificate and record the same in the record of marriages, and the legal fee therefor shall be one dollar, to be paid by the person applying for the license and at the time such license is issued. [Cf. L. '66, p. 82, § 8; L. '67, p. 105, § 2; Cd. '81, § 2386. Cf. L. '86, p. 66, § 1; 1 H. C., § 1387.]

See *infra*, § 8451, fee for marriage license.

§ 8447. [7160.] Penalty for Violating Last Section.

Any person solemnizing a marriage who shall willfully refuse or neglect to make and deliver to the judge of the superior court [county clerk] for record the certificate mentioned in section 8445, within the time in such section specified, shall be deemed guilty of a misdemeanor, and upon conviction shall pay, for such refusal or neglect, a fine of not less

than twenty-five nor more than three hundred dollars. [L. '66, p. 83, § 9; Cd. '81, § 2387. Cf. L. '86, p. 66, § 2; 1 H. C., § 1388.]

Section 158 of 2 Hill's Penal Code is omitted as superseded by this section. This provision was originally enacted as § 110 of the Law of 1854, page 95, and continued in Code of 1881, as § 925.

§ 8448. [7161.] Marriage According to Religious Ritual is Valid.

All marriages to which there are no legal impediments, solemnized before or in any religious organization or congregation, according to the established ritual or form commonly practiced therein, are valid; and a certificate, containing the particulars specified in sections 8444 and 8445, shall be made and filed for record by the person or persons presiding or officiating in or recording the proceedings of such religious organization or congregation, in the manner and with like effect as in ordinary cases. [Cd. '81, § 2389; 1 H. C., § 1389.]

See supra, § 8441, who may solemnize.

§ 8449. [7162.] Marriage, When Voidable.

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed. [L. '66, p. 81, § 3; Cd. '81, § 2381; 1 H. C., § 1390.]

See supra, § 983, annulment.

Cited in 22 Wash. 264; 50 Wash. 216; 52 Wash. 47; 57 Wash. 442; 72 Wash. 375; 80 Wash. 616—624; 111 Wash. 290.

This section refers to the force or fraud of the unwritten law: *Thorne v. Farrar*, 57 Wash. 441, 107 Pac. 347, 135 Am. St. Rep. 995, 27 L. R. A. (N. S.) 385.

Presumptions and Burden of Proof: See Remington's Digest, Marriage, § 11; Canadian & Amer. Mtg. & T. Co. v. Bloomer, 14 Wash. 491, 45 Pac. 34; Goldwater v. Burnside, 22 Wash. 215, 60 Pac. 409; Shank v. Wilson, 33 Wash. 612, 74 Pac. 812; Kromer v. Friday, 10 Wash. 621, 39 Pac. 229, 32 L. R. A. 671; Thomas v. Thomas, 53 Wash. 297, 101 Pac. 865; Weatherall v. Weatherall, 56 Wash. 344, 105 Pac. 822; Waughop v. Waughop, 82 Wash. 69, 143 Pac. 444.

Admissibility of Evidence: See Remington's Digest, Marriage, §§ 12, 13; State v. McGilvery, 20 Wash. 240, 55 Pac. 115; State v. Nelson, 39 Wash. 221, 81 Pac. 721; Weatherall v. Weatherall, 56 Wash. 344, 105 Pac. 822; Nelson v. Carlson, 48 Wash. 651, 94 Pac. 477.

Weight and Sufficiency of Evidence: See Remington's Digest, Marriage, § 14; State v. McGilvery, 20 Wash. 240, 55 Pac. 115; Summerville v. Summerville, 31 Wash. 411, 72 Pac. 84; Potter v. Potter, 45 Wash. 401, 88 Pac. 625; McDonald v.

White, 46 Wash. 334, 89 Pac. 891; Nelson v. Carlson, 48 Wash. 651, 94 Pac. 477; Sloan's Estate, In re, 50 Wash. 86, 96 Pac. 684, 17 L. R. A. (N. S.) 960; Weatherall v. Weatherall, 63 Wash. 526, 115 Pac. 1078; St. Martin v. Skamania Boom Co., 79 Wash. 393, 140 Pac. 355; Enos v. Hamblen, 79 Wash. 583, 140 Pac. 675; Potts v. Potts, 81 Wash. 27, 142 Pac. 448; Watson v. Watson, 93 Wash. 512, 161 Pac. 375.

ANNULMENT: See Remington's Digest, Marriage, §§ 17—21.

§ 16. Alimony and Allowance: *Arey v. Arey*, 22 Wash. 261, 60 Pac. 724; *Waughop v. Waughop*, 82 Wash. 69, 143 Pac. 444.

§ 17. Grounds: *Thorne v. Farrar*, 57 Wash. 441, 107 Pac. 347, 135 Am. St. Rep. 995, 27 L. R. A. (N. S.) 385.

Where plaintiff in a divorce case, after trial believed in good faith that a decree of divorce was entered, and within six months married in a foreign jurisdiction honestly believing that such marriage would be valid, her mistake of fact and law was in no sense meretricious, and authorizes the court to annul the marriage at her suit: *Knoll v. Knoll*, 104 Wash. 110, 176 Pac. 22.

A void marriage contracted in another state in violation of a decree of divorce

and of Rem. Code, § 991, prohibiting re-marriage for a period of six months, should be annulled in accordance with the public policy of the state, no matter how undeserving the parties may be: *Hahn v. Hahn*, 104 Wash. 227, 176 Pac. 3.

§ 18. **Jurisdiction and Proceedings:** *Piper v. Piper*, 46 Wash. 671, 91 Pac. 189; *Thorne v. Farrar*, 57 Wash. 441, 107 Pac. 347, 135 Am. St. Rep. 995, 27 L. R. A. (N. S.) 385; *Sortore v. Sortore*, 70 Wash. 410, 126 Pac. 915; *Waughop v. Waughop*, 82 Wash. 69, 143 Pac. 444.

§ 19. **Defense:** *Hollopeter, In re*, 52

Wash. 41, 100 Pac. 159, 132 Am. St. Rep. 952, 17 Ann. Cas. 91, 21 L. R. A. (N. S.) 847.

§§ 20, 21. **Relief:** *Buckley v. Buckley*, 50 Wash. 213, 96 Pac. 1079, 126 Am. St. Rep. 900; *Sortore v. Sortore*, 70 Wash. 410, 126 Pac. 915.

Degree of mental incapacity sufficient to invalidate marriage. *Ann. Cas.* 1913B, 1238.

Venereal disease as ground for annulment of marriage. 5 *A. L. R.* 1016; 8 *A. L. R.* 1540.

§ 8450. [7163.] License, by Whom Issued.

Before any persons can be joined in marriage they shall procure a license from a county auditor, authorizing any person or religious organization or congregation to join together the persons therein named as husband and wife. [L. '66, p. 83, § 12; Cd. '81, § 2390; 1 H. C., § 1391.]

Validity of marriage without license required by statute. 7 *Ann. Cas.* 784; 14 *Ann. Cas.* 953; 15 *L. R. A.* (N. S.) 463.

Common-law marriages between Indians. *Ann. Cas.* 1918E, 380.

§ 8451. [7164.] License Fee—Affidavits—Consent of Parents—Perjury.

The county auditor, before a marriage license is issued, upon the payment of a license fee of two dollars, shall require each applicant therefor to make and file in his office upon blanks to be provided by the county for that purpose, an affidavit showing that such applicant is not feeble-minded, an imbecile, epileptic, insane, a common drunkard, or afflicted with pulmonary tuberculosis in its advanced stages: Provided, that in addition, the affidavit of the male applicant for such marriage license shall show that such male is not afflicted with any contagious venereal disease. He shall also require an affidavit of some disinterested credible person showing that neither of said persons is an habitual criminal, and that the female is over the age of eighteen years and the male is over the age of twenty-one years: Provided, that if the consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female is under the age of eighteen years or the male is under the age of twenty-one years: Provided, that no consent shall be given, nor license issued, unless such female be over the age of fifteen years. Such affidavit may be subscribed and sworn to before any person authorized to administer oaths. Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this act shall be deemed guilty of perjury and punished as provided by the laws of the state of Washington. [L. '09, Ex. Sess., p. 53, § 3; L. '66, pp. 83, 84, §§ 13, 14; L. '67, p. 104, § 1; Cd. '81, §§ 2391, 2392; 1 H. C., §§ 1392, 1393; L. '09, p. 634, § 3.]

"Act" refers to §§ 8439, 8440, 8451 and 8452.

See *supra*, § 8446, fee for recording certificate.

Cited in 62 Wash. 688; 72 Wash. 375; 80 Wash. 616, 622; 83 Wash. 423; 104 Wash. 653.

Validity of minor's marriage without consent of parents or guardian required by statute. 17 *Ann. Cas.* 94.

§ 8452. [7165.] Penalty.

Any person knowingly violating any of the provisions of sections 8439, 8440 or 8451, shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment in the state penitentiary for a period of not more than three years, or by both such fine and imprisonment. [L. '09, Ex. Sess., p. 54, § 4. Cf. L. '66, p. 84, § 16; Cd. '81, § 2394; 1 H. C., § 1395; L. '09, p. 635, § 4.]

Cited in 62 Wash. 688; 83 Wash. 423.

§ 8453. [7166.] License, by Whom Retained.

The person solemnizing the marriage is authorized to retain in his possession the license, but the county auditor who issues the same, before delivering it, shall enter in his marriage record a memorandum of the names of the parties, the consent of the parents or guardian, if any, and the name of the affiant, and the substance of the affidavit upon which said license issued, and the date of such license. [L. '66, p. 84, § 15; Cd. '81, § 2393; 1 H. C., § 1394.]

§ 8454. [7167.] Penalty for Unlawful Joining in Marriage.

Any person who shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or any person authorized to solemnize marriage who shall join persons in marriage contrary to the provisions of this chapter, shall, upon conviction thereof, be punished by a fine of not more than five hundred nor less than one hundred dollars. [L. '66, p. 84, § 17; Cd. '81, § 2395; 1 H. C., § 1396.]

"This chapter" refers to the foregoing, except §§ 8439, 8440, 8451 and 8452.

See supra, § 2671, penalty for unlawful solemnization.

Sections 157 and 159 of 2 Hill's Penal Code are omitted as superseded by this section. The omitted provisions were originally enacted as §§ 109, 111, Laws of 1854, page 95, and continued in the Code of 1881 as §§ 924, 926.

Cited in 52 Wash. 45.

Married Persons. Rights of, see "Husband and Wife," § 6890.

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MILITIA.

TITLE LVIII.

MILITIA.

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CHAPTER I.

THE MILITIA.

§ 8455. [7168.] Military Code.

This act together with subsequent acts amendatory hereof shall be known as the military code of the state of Washington. [L. '09, p. 435, § 1. Cf. L. '55, pp. 20—22; L. '58, pp. 16—19; L. '63, pp. 532—538; L. '87, pp. 147—157; L. '90, pp. 502—516; 1 H. C., §§ 1321—1380; L. '95, p. 201, § 1.]

See Const., Art. II, § 14, when ineligible to office.

See Const., Art. X, §§ 1 and 6, liability to and exemptions from military duty.

See Const., Art. X, § 5, privileged from arrest, when.

See Const., Art. X, § 3, soldiers' home.

§ 8456. [7171.] Commander-in-chief may Order Enrollment.

Whenever the commander-in-chief shall deem it necessary, in event of, or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance of law or process of breach of the peace, he may order an enrollment by counties of all persons subject to military duty, designating the county assessor or some other person for each county to act as county enrolling officer. Each county enrolling officer may appoint such assistant or assistants as may be authorized by the commander-in-chief. In each county the enrollment shall include every sane able-bodied male inhabitant not under sentence for an infamous crime, who is more than eighteen and less than forty-five years of age. The enrollment shall be made in triplicate and shall state the name, residence, age, occupation and previous or existing military or naval service of each person enrolled. When complete the rolls shall be verified under oath by the enrolling officer, who shall immediately thereupon file one copy with the adjutant-general of the state and another with the county auditor, retaining the third copy for himself. [L. '09, p. 435, § 4. Cf. L. '95, p. 202, § 4.]

§ 8457. [7172.] Notice of Enrollment.

Persons making an enrollment under this act shall, at the time of making same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him personally or by leaving it with some person of suitable age and discretion at his place of business or residence, or by mailing such notice to him at his last known place of residence, and shall make a return under oath of such service to accompany the copy of the enrollment filed with the adjutant-general. Such return shall be prima facie evidence of the facts therein shown. [L. '09, p. 436, § 5. Cf. L. '95, p. 202, § 5.]

§ 8458. [7173.] Exemptions.

Whenever an enrollment shall have been ordered under this act, the commanding officers of existing organizations of militia, and the chiefs of

all police and fire departments shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officer shall also mark "exempt" opposite the names of all federal, state and county officers. All other persons claiming exemption must within fifteen days after service upon them of the notice of enrollment make a written verified claim in duplicate of such exemption and file the same in the office of the county auditor, who shall within five days thereafter forward one copy thereof with remarks and recommendations to the adjutant-general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant-general, the latter shall notify the county auditor of his decision in each case where exemption has been claimed, and the county auditor shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant-general, the word "exempt." All those on the roll not marked "exempt" shall be subject to military duty. [L. '09, p. 436, § 6.]

See supra, § 6924, hospital employees exempt.

See infra, § 11358, telegraph employees exempt from militia duty.

§ 8459. [7174.] Penalties for Dereliction or False Certificate.

If any officer or person, who becomes charged under this act with any duty relating to an enrollment of persons subject to military duty, refuses or neglects to perform the same within the time and substantially in the manner required by law, or if he shall knowingly make any false certificate, or if, when acting as county or assistant enrolling officer, he shall knowingly or willfully omit from the roll any person required by this act to be enrolled he shall thereby forfeit not less than one hundred nor more than five hundred dollars, to be sued for in the name of the state of Washington by the prosecuting attorney of the county in which such offense shall occur, the amount of the penalty to be determined by the court, and when recovered, to be paid into the military fund of the state. [L. '09, p. 437, § 7.]

§ 8460. [7175.] Compensation of Enrolling Officer.

Each county enrolling officer shall be allowed the sum of five cents per name enrolled and served with notice of enrollment by him or his assistants, to be audited and paid as other military bills out of any moneys in the military fund not otherwise appropriated, and from such allowance he must pay his assistant or assistants. [L. '09, p. 437, § 8.]

§ 8461. [7176.] Examination of Assessment-rolls and Poll-lists.

All civil officers in each county, city and town shall allow persons authorized under this act to make enrollments, at all proper times, to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in section 8459 of this chapter, upon application of any person legally

authorized to make an enrollment, truthfully to state all of the facts within his knowledge concerning any individual of whom the enroller shall make inquiry. In event of a violation of this section the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty. [L. '09, p. 438, § 9. Cf. L. '95, p. 202, § 6.]

CHAPTER II. MILITARY CODE.

§ 8462. **Glasses of Militia.**

The militia of the state of Washington shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention of becoming a citizen of the United States, residing within this state, who shall be more than eighteen years of age and, except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into three classes, the national guard of Washington, the naval militia of Washington, and the unorganized militia. The national guard and naval militia of Washington shall be known collectively as the organized militia of Washington. [L. '17, p. 354, § 1.]

Calling Out and Pay of Militia: See Chapin v. Ferry, 3 Wash. 386, 28 Pac. Remington's Digest, Militia, §§ 1, 2; 754, 15 L. R. A. 116.

§ 8463. **Governing Officers—Salary of Adjutant-general.**

The militia of the state not in the service of the United States shall be governed and its affairs administered pursuant to law by the governor, as commander-in-chief, through the adjutant-general's department, which shall consist of the adjutant-general as its executive head, and such other officers and such enlisted men and civilian employees as the governor shall from time to time prescribe. The salary of the adjutant-general shall be three thousand dollars per year. [L. '17, p. 354, § 2.]

§ 8464. **Composition of Organized Militia—Minimum Strength—Power to Organize or Disband.**

The organized militia of Washington shall consist of the commissioned officers, warrant officers, enlisted men, organizations, staffs, corps and departments of the regularly commissioned, warranted and enlisted militia of the state, organized and maintained pursuant to law. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline shall be prescribed by the governor in conformity with the laws and regulations of the United States and the laws of this state. In the absence of any federal law or regulation to the contrary, its minimum enlisted strength shall be fifteen hundred and it shall include at all times the adjutant-general's department, at least one regiment of infantry, at least eight companies of coast artillery, at least two hundred naval militia, and at least one troop of cavalry. The governor may authorize and cause to be organized from time to time within the organized militia of Washington, such additional staffs, corps, departments, branches, arms and organizations as he shall deem necessary, and he shall have power at will to alter, divide, consolidate,

disband, muster out or reorganize and staff, corps, department, branch, arm or tactical or administrative subdivision either now existing or hereafter created within the organized militia of Washington, subject to the limitations imposed by the laws and regulations of the United States and the laws of this state. [L. '17, p. 355, § 3.]

§ 8465. Conformity to Federal Regulation.

The duty of maintaining and governing the organized militia not in the service of the United States rests upon the states respectively, subject to the constitutional authority of congress, but the prime object of the force is the national defense. Its efficiency as an agent for national defense necessarily depends upon systematic uniformity in the organization, composition, arms, equipment, training and discipline of its component parts. Its attainment of such uniformity and efficiency requires on the part of each state a rigid adherence to federal laws and regulations relating to the militia. Therefore, the governor shall cause the organized militia of this state always to conform to all such federal laws and regulations as are now or may hereafter from time to time become operative and applicable, notwithstanding anything in the laws of this state to the contrary. The organized militia of Washington or any part thereof shall be subject to call or draft for United States service at such times, in such manner, and in such numbers as may from time to time be prescribed by the United States.

In conformity with the provisions of federal statutes, officers and enlisted men of the organized militia called or drafted into federal service by order or proclamation of the President of the United States, shall upon release from federal service revert to their former status, grade and rank as members of the organized militia of Washington, and shall continue to serve in the organized militia of Washington until separated therefrom in the manner provided by law. [L. '21, p. 213, § 1; L. '17, p. 355, § 4.]

§ 8466. National Guard—Naval Militia.

The national guard of Washington shall consist of the commissioned officers, enlisted men, staffs, corps, departments, and organizations of the organized militia of Washington regularly organized and maintained pursuant to law for land service, and the naval militia of Washington shall consist of the commissioned officers, warrant officers, enlisted men, staffs, corps, departments and organizations of the organized militia of Washington regularly organized and maintained for naval service. [L. '17, p. 356, § 5.]

§ 8467. [7181.*] Personal Staff for Governor.

Whenever the governor shall desire the attendance of a personal staff upon any ceremonial occasion, he shall detail therefor such officers as he may choose from the active list of the organized militia of Washington, resident in or nearest to the place where such ceremonies are to be held, and the officers detailed shall attend in uniform at the time and place designated and shall constitute the personal staff of the governor

for that occasion, reverting upon completion of such duty to their regular assignments. [L. '17, p. 356, § 6; L. '09, p. 439, § 14.]

§ 8468. [7182.*] Causes for Ordering Militia into Service by Governor.

In event of war, insurrection, rebellion, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster the governor shall have power to order the organized militia of Washington or any part thereof into the active service of the state, and to cause them to perform such duty as he shall deem proper. The governor shall also have power to order out the organized militia or any part thereof to preserve order and keep people within bounds at any large public assemblage: Provided, that such action shall be taken only upon written request of the mayor of the city and the sheriff of the county within which said assemblage is to occur. [L. '17, p. 356, § 7; L. '13, p. 225, § 2. Cf. L. '09, p. 440, § 15.]

See references to § 8470.

§ 8469. [7183.*] Causes for Ordering into Service by Officer of Station.

In event of insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, occurring in the vicinity of the station of any organization or organizations of the organized militia of Washington, whenever the exigencies of the situation are such as to render it impracticable first to communicate with the governor, the senior commanding officer of that station, upon request in writing signed by a superior court judge, sheriff or mayor, stating the facts and the nature of the service desired, may order out the organization or organizations at that station, or such portion thereof as he shall deem necessary, and cause them to perform such duty as the circumstances shall require, and such commanding officer shall immediately report what he has done and all of the circumstances of the case to the governor. [L. '17, p. 357, § 8; L. '09, p. 440, § 16. Cf. L. '95, p. 230, § 111.]

§ 8470. [7184.*] Calling Out Unorganized Militia.

In event of, or imminent danger of, war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, if the governor shall have ordered into active service all of the available forces of the organized militia of Washington and shall consider them insufficient in numbers to properly accomplish the purpose, he may then in addition order out the unorganized militia or such portion thereof as he may deem necessary, and cause them to perform such military duty as the circumstances may require. [L. '17, p. 357, § 9; L. '09, p. 440, § 17. Cf. L. '95, p. 231, §§ 110 and 112; L. '03, p. 323, § 15.]

See Const., Art. III, § 8, governor commander-in-chief.

See infra, § 10982, and notes, powers of governor.

§ 8471. Failure to Respond on Order for Service.

Every member of the militia who shall have been ordered out for either state or federal service under the provisions of sections 8468, 8469 or

8470, and who shall refuse or willfully or negligently fail to report at the time and place and to the officer designated in the order or to the representative or successor of such officer shall be deemed guilty of desertion, and shall suffer such penalty as a general court-martial may direct, unless he shall produce a sworn certificate from a licensed physician of good standing that he was physically unable to appear at the time and place designated: Provided, that any person chargeable with desertion under this section may be taken by force and compelled to serve. [L. '17, p. 358, § 10.]

§ 8472. [7189.] Penalty for Physician Making False Certificate.

Whenever any physician shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service, such physician shall thereby forfeit forever his license and right to practice in this state and shall be deemed guilty of perjury. [L. '09, p. 443, § 22.]

§ 8473. [7192.] Suits Against Officers, or Enlisted Men.

When any suit or proceeding shall be commenced in any court by any person against any military officer of the state for any act done by such officer in his official capacity in the discharge of any duty under this act or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting such suit or proceeding to file a cost bond running to the state of Washington of not less than two hundred dollars or such greater sum as may be fixed by the court on application therefor for the payment of costs that may be incurred by the defendant therein, and in case the plaintiff shall be nonsuited or have the verdict or judgment rendered against him the defendant shall recover costs. The defendant in such action shall be defended by the attorney general at the expense of the state, but private counsel may be employed by the defendant. No action shall lie against any officer or enlisted man for any acts done by him by virtue of any order which may hereafter be held invalid by any civil court. [L. '09, p. 444, § 25.]

§ 8474. [7194.*] Adjutant-general—Terms—Salaries—Bonds—Duties.

The adjutant-general shall be ex-officio chief of staff. He shall hold office until his successor is detailed and qualified. He shall appoint the civilian employees of his department and may remove any of them in his discretion.

The expenses of the adjutant-general's department, necessary to the military service, shall be audited, allowed and paid as other military expenditures are audited, allowed and paid. Before entering upon his official duties, the adjutant-general must execute an official bond running to the state of Washington in the penal sum of twenty thousand (\$20,000) dollars conditioned upon the faithful performance of his duties, said bond to be submitted to the attorney-general for approval, and when approved to be filed in the office of the secretary of state, the cost of said bond to be paid from the military fund of the state. The adjutant-general shall obtain and pay for, from the military fund, a surety com-

pany bond or bonds running to the state of Washington covering all of the officers of the organized militia of Washington responsible to the state for money or military property, such bond or bonds to be approved and filed in the same manner as the adjutant-general's bond.

(1) The adjutant-general shall keep rosters of all active, reserve and retired officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and shall submit to the governor during October of each even-numbered year a printed biennial report of the operations and conditions of the organized militia of Washington.

(2) On the first day of January, of each year, he shall make a statement of the condition of the military fund, showing the amount thereof and setting forth in detail all receipts from whatsoever source and all expenditures of whatsoever nature and the unexpended balance thereof. A copy of said statement shall be furnished to each commissioned officer of the active list.

(3) He shall cause the military law, the regulations of the organized militia of Washington and such other military publications as may be necessary for the military service to be printed, indexed and bound at the expense of the state and distributed to the commissioned officers of the organized militia of Washington.

(4) He shall keep and preserve the books, arms, accoutrements, ammunition and other military property belonging to the state, not properly issued.

(5) He shall keep just and true accounts of all moneys received and disbursed by him.

(6) He shall attest all commissions issued to military officers of this state.

(7) He shall make out and transmit all militia reports, returns and communications prescribed by acts of congress or by direction of the War or Navy Department.

(8) He shall have a seal, and all copies, orders, records and papers in his office, duly certified and authenticated under said seal, shall be evidenced in all cases in like manner as if the originals were produced. The seal now used in the office of the adjutant-general shall be the seal of his office and shall be delivered by him to his successor. All orders issued from his office shall be authenticated with said seal.

(9) He shall make such regulations pertaining to the preparation of reports and returns and to the care and preservation of property in possession of the state for military purposes, whether belonging to the state or to the United States, as in his opinion the conditions demand.

(10) He shall attend to the care, preservation, safekeeping and repairing of the arms, ordinance, accoutrements, equipment and all other military property belonging to the state, or issued to the state by the government of the United States for military purposes, and keep accurate accounts thereof. All military property of the state, which after proper inspection, shall be found unsuitable for use of the state shall be disposed of in such manner as the governor shall direct and the proceeds thereof paid into the military fund of the state.

(11) He shall issue such military property as the necessity of the service requires and make purchases for that purpose. No military property shall be issued or loaned except upon an emergency to persons or organizations other than those belonging to the organized militia of Washington except to such portions of the unorganized militia as may be called out by the governor.

(12) He shall keep on file in his office the reports and returns of troops and heads of military departments, and all other writings and papers required to be transmitted to and preserved at the general headquarters of the state militia.

(13) He shall keep all records of Washington volunteers commissioned or enlisted for the war of the rebellion, Indian wars, Spanish-American war, and all other wars or insurrections, and of individual claims of citizens of Washington for service rendered in these wars or insurrections.

(14) He shall establish and maintain as part of his office a bureau of records of the services of the Washington troops during said wars, and he shall be custodian of all records, relics, trophies, colors and histories relating to such wars now in possession of, or which may be acquired by the state of Washington, and such records, relics, trophies, colors and histories shall be catalogued and arranged or filed for general reference or protection in the office of the adjutant-general. [L. '17, p. 358, § 11; L. '13, p. 226, § 4. Cf. L. '09, p. 445, § 27; L. '95, p. 209, § 38; L. '01, p. 158, § 4.]

§ 8475. Appointment of Commissioned and Warrant Officers.

All commissioned and warrant officers of the organized militia of Washington shall be appointed and commissioned or warranted by the governor. No person shall be so appointed and commissioned or warranted unless he shall be a citizen of the United States and of this state more than twenty-one years of age. Every commissioned and warrant officer shall hold office under his commission or warrant until he shall have been regularly appointed and commissioned or warranted to another grade or office, or until he shall have been regularly retired, discharged, dismissed or placed in the reserve. [L. '17, p. 361, § 12.]

§ 8476. Examination Prior to Appointment—Probationary Period.

No person shall be appointed and commissioned or warranted to any office in the organized militia of Washington unless he shall have been examined and adjudged qualified therefor by an examining board whose report shall have been approved by the authority appointing the board. The composition, appointment and procedure of examining boards and the nature and scope of examinations shall be as prescribed by the laws or regulations of the United States or those of this state. Whenever a commissioned officer shall have been examined for promotion pursuant to this section and shall have been adjudged not qualified therefor, upon approval by the authority appointing the board of its report to that effect such officer shall be honorably discharged, retired or placed in the reserve as the governor shall direct.

Any officer of the naval militia of Washington who holds either a probationary or a permanent commission therein and who has not been

certified as fully qualified for his grade after examination under United States authority may be retained as an officer and required to take the next succeeding United States examination for his grade. If he is not certified after such second examination he shall be immediately retired, placed in reserve or honorably discharged, as the governor may direct.

Every appointment of any person as a commissioned or warrant officer in the naval militia of Washington shall be probationary and revocable by the governor at will for the period of one year next after such appointment and at the expiration of such period shall be revoked or made permanent by the governor: Provided, that if the appointee shall have qualified in compliance with United States law or regulations during such probationary period, his commission or warrant shall, upon such qualification, be no longer probationary or revocable in that grade. [L. '17, p. 361, § 13.]

§ 8477. Vacancy in Adjutant's Office.

Whenever a vacancy shall have occurred or shall be about to occur in the office of the adjutant-general of this state, the governor shall detail for that position from the active list of the organized militia of Washington some officer not below the grade of captain of the national guard or senior lieutenant of the naval militia, who shall have had at least three years' service as an officer on the active list of the organized militia of Washington continuously next prior to such detail, and the officer so detailed shall be subject to relief therefrom by the governor at will, and shall during the continuance of his service as the adjutant-general hold the rank and grade of brigadier-general. [L. '17, p. 362, § 14.]

Vacancy, see *supra*, § 8485.

§ 8478. Vacancies in Commissioned Grades—Detail not to Affect Grade—Relief from Detail.

Vacancies in commissioned grades in administrative staff, corps and departments shall be filled by detail or by appointment and commission as the governor shall have prescribed in regulations conforming as nearly as practicable with federal laws and regulations governing the filling of similar vacancies in the federal service: Provided, that no officer shall be detailed or appointed and commissioned to any such staff, corps or department without his written consent. The detail of an officer to a staff, corps or department shall not affect his grade, relative seniority, or right to promotion in the branch or arm of the service from which he shall have been so detailed, and whenever during the continuance of such detail a vacancy shall occur in the branch or arm of the service from which such officer shall have been detailed for which vacancy he would have been eligible in the absence of such detail, he shall upon the termination of such detail and passing the required examination be appointed and commissioned to the grade of such vacancy with rank from the date of the occurrence thereof. When an officer shall be relieved from detail as the adjutant-general or from detail with any staff, corps or department he shall be returned to the branch or arm of the service from which he was detailed and shall be assigned to fill the next vacancy therein of his rank and grade, and if there be no vacancy immediately available

he shall be carried in the meantime upon the active list as "Unassigned." [L. '17, p. 362, § 15.]

§ 8479. Staff Officers—Tenure.

Staff officers of the national guard of Washington, including officers of the pay, inspection, subsistence and medical departments, hereafter appointed shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by court-martial legally convened for that purpose and vacancies among said officers shall be filled by appointment

§ 8477. Vacancy in Adjutant-general's Office.

Whenever a vacancy has occurred, or shall be about to occur in the office of the adjutant-general of this state, the governor shall detail for that position from the active list of the organized militia of Washington some officer not below the grade of captain of the national guard, or senior lieutenant of the naval militia, who shall have had at least two years service as an officer of the active list of the organized militia during the five years next prior to such detail, and the officer so detailed shall be subject to relief therefrom by the governor at will, and shall during the continuance of his service as the adjutant-general hold the rank and grade of brigadier-general.

If, by reason of the call or draft of officers of the organized militia of Washington into federal service, there shall be no officer of the organized militia possessing the requisite prior service qualifications available for detail as the adjutant-general, then the governor may detail any officer or former officer of the organized militia of Washington as acting adjutant-general: Provided, that in the event the officer on detail as the adjutant-general is appointed, called or drafted into the military service of the United States by order or proclamation of the President, he shall be granted leave of absence by the governor, and such officer shall be entitled, upon release from federal service, to return to his former status as the adjutant-general of Washington, and during the period such adjutant-general is in federal service, the duties of the office of adjutant-general shall be performed by an acting adjutant-general, appointed by the governor, and who shall receive the pay provided for the adjutant-general during the period of such assignment. [L. '21, p. 214, § 2; L. '17, p. 365, § 22.]

by the assignment thereof to an officer of the same grade and branch or arm of the service resident at the station of said company or similar unit, or by the promotion of the senior officer of the next lower grade of the same branch or arm of the service resident at that station. [L. '17, p. 364, § 18.]

§ 8482. Vacancies in Commissioned Staff.

Whenever a vacancy shall have occurred in the commissioned staff of any regiment, battalion, squadron, coast defense command, fort com-

mand, or similar unit of the organized militia of Washington, the same shall be filled by the assignment thereto of an officer of the same grade and branch or arm of the service, or by the promotion of the senior officer of the next lower grade of the same unit. [L. '17, p. 364, § 19.]

§ 8483. Vacancies in Grade of Major.

Whenever a vacancy shall have occurred in the grade of major in the line of the national guard of Washington, the same shall be filled as follows:

(1) In any battalion, squadron, fort command or similar unit whose elements are all at one station, by the assignment of the senior major of the line of the same branch or arm of the service resident at that station who shall have no command wholly located within said station, or, if there be no such major, by the promotion of the senior captain of the same branch or arm of the service resident at said station.

(2) In any battalion, squadron, fort command or similar unit whose elements are not all at one station, by the promotion of the senior among the captains of the same branch or arm of the service resident at the various stations of such command. [L. '17, p. 365, § 20.]

§ 8484. Vacancy in Grade of Colonel or Lieutenant-colonel.

Whenever a vacancy shall have occurred in the grade of colonel or lieutenant-colonel in any regiment, coast defense command or similar unit of the national guard of Washington, it shall be filled by promotion of the next senior officer of such command, except in those cases where the law provides for the assignment thereto of officers relieved from detail with staff, corps and departments. [L. '17, p. 365, § 21.]

§ 8485. Vacancy in Adjutant-general's Office.

Whenever a vacancy has occurred, or shall be about to occur in the office of the adjutant-general of this state, the governor shall detail for that position from the active list of the organized militia of Washington some officer not below the grade of captain of the national guard, or senior lieutenant of the naval militia, who shall have had at least two years service as an officer of the active list of the organized militia during the five years next prior to such detail, and the officer so detailed shall be subject to relief therefrom by the governor at will, and shall during the continuance of his service as the adjutant-general hold the rank and grade of brigadier-general.

If, by reason of the call or draft of officers of the organized militia of Washington into federal service, there shall be no officer of the organized militia possessing the requisite prior service qualifications available for detail as the adjutant-general, then the governor may detail any officer or former officer of the organized militia of Washington as acting adjutant-general: Provided, that in the event the officer on detail as the adjutant-general is appointed, called or drafted into the military service of the United States by order or proclamation of the President, he shall be granted leave of absence by the governor, and such officer shall be entitled, upon release from federal service, to return to his former status as the adjutant-general of Washington, and during the period such adju-

tant-general is in federal service, the duties of the office of the adjutant-general shall be performed by an acting adjutant-general, appointed by the governor, and who shall receive the pay provided for the adjutant-general during the period of such assignment. [L. '21, p. 214, § 2; L. '17, p. 365, § 22.]

Vacancy, see *supra*, § 8477.

§ 8486. Vacancies While in United States Service.

Whenever a vacancy shall have occurred in any commissioned grade, other than the lowest commissioned grade, of any regiment, coast defense command, separate battalion or squadron, separate fort command, separate company or similar separate unit of the national guard of Washington while in the service of the United States, such vacancy shall be filled by the promotion of the senior officer of the next lower grade on duty with such command who shall not in writing have waived such promotion. Every vacancy in the lowest commissioned grade in any such command while in such service shall be filled by the promotion of an enlisted man of such command upon the written recommendation of its commanding officer: Provided, that any vacancy in any such command while in such service in any commissioned grade below that of major may be filled, upon the written recommendation of the commanding officer of such command, by the transfer, assignment or appointment of any officer of the national guard, or national guard reserve, of this state. [L. '17, p. 365, § 23.]

§ 8487. Promotion in Naval Militia.

Whenever a vacancy shall have occurred in the senior commissioned office of the naval militia of Washington or of a battalion thereof, it shall be filled by the promotion or assignment thereto of the senior line officer whether for line duties only or for engineering duties only. [L. '17,

§ 8485. Vacancy in Grade of Brigadier-general.

Whenever a vacancy shall have occurred in the grade of brigadier-general of the line of the national guard of Washington, it shall be filled by the promotion of an officer of the line of the national guard of Washington of the next lower grade of the same branch or arm of the service. [L. '17, p. 365, § 22.]

scribed by law, and give bond, if required. In case of neglect or refusal so to do, he shall be considered to have resigned such office and a new appointment may be made as provided by law. [L. '17, p. 366, § 26.]

§ 8490. Oath of Office.

The oath of office for commissioned and warrant officers in the organized militia of Washington shall be substantially as follows: "I, —, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the state of Washington, against

all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the governor of the state of Washington; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of — in the national guard of the United States and of the state of Washington (or in the naval militia of Washington) upon which I am about to enter, so help me God.” [L. '17, p. 366, § 27.]

§ 8491. [7200.] Seniority of Officers.

Upon the date this act becomes effective, or as soon thereafter as practicable, it shall be the duty of the commander-in-chief to assign to each commissioned officer of the active list of the national guard of Washington a number, assigning to the senior officer of each grade number one and continuing lineally thereafter in such grade in order of seniority as of the date of commission in the grade held by each officer on the day this act becomes effective. Thereafter seniority in any given grade shall be determined by the greatest length of continuous service as an officer of the national guard of Washington, said service to be calculated from the day this act becomes effective. If two or more officers of the same grade have equal length of continuous service as commissioned officers of the national guard of Washington calculated from the date this act becomes effective, seniority between them shall be determined by length of service in that grade. The rank of retired officers, returned to the active list, shall be determined in the grade held by them by service as officers of the active list performed subsequent to the date this act becomes effective. The rank of any officer who shall receive his first commission in the national guard of Washington after this act becomes effective, shall be determined in the grade to which appointed by length of service as an officer of the active list, performed subsequent to the date this act becomes effective. [L. '09, p. 453, § 33.]

§ 8492. [7206.*] Dismissal and Discharge of Officers.

The governor may dismiss any commissioned or warrant officer of the organized militia of Washington for any of the following reasons:

- (1) Conviction of an infamous crime.
- (2) Absence from his command for more than thirty days without proper leave.
- (3) Sentence of dismissal by court-martial, duly approved.

And the governor may discharge any commissioned or warrant officer of the organized militia of Washington for any of the following reasons:

- (1) Upon muster out of the organization to which such officer is then assigned.
- (2) Acceptance of resignation of such officer: Provided, that no officer shall be discharged or his resignation accepted while under arrest or against whom military charges have been preferred, or until he shall have turned over to his successor or satisfactorily accounted for all state and federal moneys, and military property for which he shall be accountable or responsible.

(3) Removal of his actual residence to such distance from the station of his command as to render it impracticable for him to perform the duties of his office.

(4) Incompetence or unfitness for military service as determined by the duly approved findings of an efficiency board appointed for that purpose. [L. '17, p. 367, § 28; L. '09, p. 457, § 39. Cf. L. '95, p. 218, § 63.]

§ 8493. [7207.] Retirement of Officers.

Commissioned officers of the national guard of Washington shall be retired by order of the commander-in-chief with the grade and rank respectively held by them at the time of such retirement for the following reasons:

(1) Upon reaching the age of sixty-four years.

(2) Unfitness for military service by reason of permanent physical disability.

(3) Upon request after at least five years' continuous service as officers in the national guard of Washington.

Retired officers shall draw no pay or allowances except when on duty.

They shall be subject only to temporary detail by the commander-in-chief and while on duty shall receive the same pay and allowances as officers of the same rank on the active list. On all occasions of duty or ceremony retired officers shall take rank next below officers of the same grade on the active list. [L. '09, p. 458, § 40. Cf. L. '95, p. 219, § 66.]

§ 8494. Reserves—Officers Reserve Corps Abolished—Restoration to Active List.

The national guard reserve and naval militia reserve of this state shall respectively be organized by the governor in regulations conforming with the laws, rules and regulations of the United States. It shall consist of such organizations, officers and enlisted men as the governor shall prescribe. No commissioned officer shall be transferred or furloughed to the national guard reserve without his written consent, except as otherwise expressly provided by law. The officers reserve corps is abolished and the officers thereof are hereby transferred to the national guard reserve and the naval militia reserve. Officers of the retired list of the organized militia of Washington may be transferred to the national guard reserve of the naval militia reserve under such regulations as the governor may prescribe. Any officer of the national guard reserve or naval militia reserve may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his grade, and in such event his service in reserve shall not be counted in computing total length of service for relative seniority. [L. '17, p. 368, § 29.]

§ 8495. Period of Enlistment—Re-enlistments—Continuance in Service.

Hereafter the period of enlistment in the national guard of Washington shall be for six years; the first three years of which shall be in an active organization, and the remaining three years in the national guard reserve. The period of enlistment in the naval militia of Washington shall be three years. An enlisted man of the naval militia who has

served honorably for the full term of his enlistment may re-enlist for a term of one, two, or three years, as he may elect. Qualifications for enlistment or re-enlistment and the forms of oaths and contracts of enlistment or re-enlistment shall be as prescribed by the governor in accordance with federal laws and regulations. In the national guard, the privilege of continuing in active service during the whole of an enlistment period, and of re-enlisting in said service shall not be denied by reason of anything contained in this act. In the naval militia enlisted men may continue in service after the age of forty-five years, and until the age of sixty-two years (naval branch), or sixty-four years (marine corps branch): Provided, the service is continuous. When a man re-enlists in the organized militia of Washington within thirty days from the date of the expiration of his prior enlistment, or within thirty days from the date of his discharge, his term of service shall be considered as continuous, and shall be so dated. [L. '17, p. 368, § 30.]

§ 8496. Discharge from Service.

An enlisted man discharged from service in the organized militia of Washington shall receive a discharge in writing in such form and of such classification as is or shall be prescribed by law or regulations, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by competent authority. [L. '17, p. 369, § 31.]

§ 8497. [7216.*] Arms and Equipment of Commissioned Officers—Uniform Allowance.

Every commissioned officer of the organized militia of Washington shall within sixty days from the date of the order whereby he shall have been appointed, provide himself at his own expense, with the arms, uniforms and equipments prescribed by the governor for his rank and assignment.

There shall be audited and paid annually on the first day of April in each year, to each properly armed, uniformed and equipped officer of the active list of the organized militia of Washington, a uniform allowance of seventy-five (\$75) dollars for dismounted officers, and one hundred (\$100) dollars for mounted officers. [L. '17, p. 369, § 32; L. '09, p. 461, § 49. Cf. L. '95, p. 221, § 76; L. '01, p. 162, § 8; L. '03, p. 321, § 11.]

§ 8498. [7218.*] Militia Property Remains Public.

All property issued to organizations and members of the organized militia of Washington shall be and remain public property. [L. '17, p. 369, § 33; L. '09, p. 462, § 51. Cf. L. '95, p. 222, § 78.]

See Const., Art. X, § 4, custody of public arms.

§ 8499. [7219.] Buying and Receiving State Property Prohibited.

If any person shall purchase or receive in pawn or pledge any military property of the state of Washington or of the United States, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to imprisonment not exceeding one year, or fined not exceeding three hun-

dred dollars or to both such fine and imprisonment. [L. '09, p. 462, § 52. Cf. L. '95, p. 223, § 80.]

§ 8500. [7220.*] Uniforms, etc., Exempt.

The military uniforms, arms, equipment and mounts of members of the organized militia of Washington shall be exempt from execution and taxation. [L. '17, p. 370, § 34; L. '09, p. 462, § 53. Cf. L. '95, p. 223, § 82.]

§ 8501. [7221.] Allowances for Incidental Expenses.

Each commanding officer shall be entitled to receive an allowance for the incidental expenses of his command payable quarterly in advance according to the following schedules: companies, troops, batteries and like units not to exceed twenty-five (\$25) dollars per month; bands not to exceed fifteen (\$15) dollars per month; battalions and like units not to exceed ten (\$10) dollars per month; regiments and like units not to exceed twenty-five (\$25) dollars per month.

For the first quarter of each biennial period each officer entitled to a quarterly allowance under this section shall be entitled to receive in advance the maximum allowance in full, but with his claim therefor he shall make remittance of the balance, if any, remaining unexpended from the last previous quarter, such remittance to be transmitted by the adjutant-general to the state treasurer, and for each succeeding quarter of each biennial period, each such officer shall be entitled to receive such sum, not more than the maximum allowance above prescribed, as he shall have expended for authorized expenses of his command during the next preceding quarter. Each claim for quarterly allowance shall include an account current showing the items of expenditure and shall be accompanied by subvouchers for all items, each voucher stating definitely the nature and amount of the expenditure evidenced thereby. [L. '13, p. 232, § 8. Cf. L. '09, p. 462, § 54. Cf. L. '95, p. 223, § 87; L. '03, p. 322, § 12; L. '07, p. 224, § 1.]

§ 8502. [7222.*] Military Auditors.

The board of military auditors shall consist of the adjutant-general and two officers of the active list of the organized militia of Washington to be selected by the state auditor and detailed by the governor, which board shall audit and pass upon all claims against the military appropriations. The board shall meet at the call of the adjutant-general. [L. '17, p. 370, § 35; L. '13, p. 232, § 9. Cf. L. '09, p. 463, § 55. Cf. L. '95, p. 223, § 86; L. '01, p. 163, § 9.]

Cited in 62 Wash. 268.

The fact that false claims against the state were audited and allowed by the board of military auditors, under Rem. & Bal. Code, sections 7222 and 7223, does not preclude defenses to warrants therein

in the hands of an innocent holder, there being nothing in such sections to indicate an intent to make the warrants negotiable: State ex rel. Olympia Nat. Bank v. Lewis, 62 Wash. 266, 113 Pac. 629.

§ 8503. [7223.*] Audit and Payment of Claims—Warrants.

All bills, claims and demands against the military fund shall be certified or verified in the manner prescribed by regulations promulgated

by the governor and shall be audited by the proper board of military auditors, and, if allowed, shall be paid by the state treasurer upon the warrant of the state auditor from the military fund: Provided, however, that in all cases where the organized militia or any part thereof is called into the service of the state in case of war, riot, insurrection, invasion, breach of the peace, or in aid of the civil authorities, warrants for allowed pay and expenses for such service shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund not otherwise appropriated. All military warrants shall be the obligations of the state and shall bear interest at the legal rate from the date of their presentation for payment. [L. '17, p. 370, § 36; L. '09, p. 463, § 56. Cf. L. '95, p. 225, § 91.]

Cited in 62 Wash. 268.

§ 8504. [7224.*] Pay and Allowances.

Commissioned officers while on duty requiring pay shall receive the same pay and allowance as commissioned officers of the United States of the same grade and term of service: Provided, that for travel only actual necessary expenses shall be allowed.

For the purpose of pay and allowance as an officer of the national guard, service with the First Washington Volunteer Infantry, as an officer or enlisted man until mustered out of the organization shall be considered equivalent to three years' service in the national guard of Washington. For the purpose of pay and allowance of an officer in the national guard, service as an enlisted man in the national guard of Washington shall be considered equivalent to service as an officer: Provided, that said service as an enlisted man and officer be continuous.

For all duty requiring pay, enlisted men of the land branches in the national guard of Washington shall receive pay at rates equivalent to twice those allowed for corresponding grades in the regular service of the United States army: Provided, that the pay of cooks and bandsmen shall be three dollars (\$3) per day. Enlisted men of the naval militia branch of the national guard of Washington shall receive pay at rates equivalent to those allowed for corresponding grades in the regular service of the United States navy, plus an addition to each respective rate of pay sufficient to make the same equal the next higher of the following seven per diem rates of pay, viz.: three dollars (\$3), two dollars and fifty cents (\$2.50), two dollars (\$2), one dollar and seventy-five cents (\$1.75), one dollar and fifty cents (\$1.50), one dollar and twenty-five cents (\$1.25), and one dollar (\$1).

For each re-enlistment, after serving a full term of three years, there shall be added ten per cent. For the purpose of pay and allowance, service for a full term of enlistment in the regular or volunteer army of the United States, or in the First Washington Volunteer Infantry until muster out of that organization, shall be equivalent to a full enlistment. Enlisted men proving such service shall be allowed ten per cent additional on their pay.

This schedule of pay shall apply only to the first thirty days of any tour of duty and after the thirtieth day of any such tour, officers and men shall receive the pay allowed officers and men in the regular service

of the United States or corresponding organizations, grades and terms of service.

Extra duty pay to men detailed as clerks and on similar duty may be allowed by the commanding officers of troops on duty, but in no case shall pay and extra pay exceed two dollars and fifty cents (\$2.50) per day.

Upon completion of his enlistment, or upon discharge by proper authority, each enlisted man shall receive in addition to the pay above mentioned, the sum of fifty cents (50c) for each day of state paid service not exceeding fifty days, less all proper deductions for fines or lost property: Provided, that claims for such additional pay shall not be valid unless filed with the adjutant-general within twelve (12) months from the date of discharge: Provided, further, that members of the national guard who have enlisted in or been emerged into service of the United States army, navy or marine shall have twelve (12) months from their discharge from the United States service in which to file their claim for such additional pay.

In addition to the pay herein provided the commander-in-chief, or such other state official as may be designated by federal authority, is authorized to receive and disburse, in accordance with federal laws and regulations, any moneys which may be appropriated by the congress of the United States and allotted to the state of Washington for the payment of officers and enlisted men of the organized militia as reimbursement for expenses incurred in, and compensation for, the time devoted to military training during times of peace. [L. '19, p. 386, § 1; L. '17, p. 370, § 37; L. '15, p. 155, § 1. Cf. L. '09, p. 463, § 57; L. '95, p. 224, § 89; L. '01, p. 163, § 11; L. '03, p. 322, § 13; L. '07, p. 224, § 5; L. '13, p. 233, § 10.]

§ 8505. [7225.] Transportation and Subsistence.

There shall be provided by the state transportation for all officers and transportation and subsistence for all enlisted men who shall be ordered out for encampment, field duty, or stated parades, or assembled for duty in case of riot, tumult, breach of the peace, war, insurrection, invasion or imminent danger thereof. Necessary transportation, quartermasters' stores and subsistence for troops when ordered on duty shall be contracted for by the proper officers and paid for as other military bills. There shall be allowed from the military fund for each day's service the sum of two (\$2) dollars per man for each horse for every mounted officer, and mounted orderly, and all members of such other organizations of the national guard of Washington as are required to be mounted. Horses not furnished by officers or men shall be rented by the state at a cost not exceeding two (\$2) dollars per day for each horse. For mounted organizations the adjutant-general may in his discretion cause horses to be purchased and maintained from the appropriation for maintenance. [L. '13, p. 234, § 11. Cf. L. '09, p. 465, § 58. See references to above section.]

§ 8506. [7226.*] Stated Parades.

There shall be four stated parades annually, with pay as follows: February 22d, May 30th, July 4th, and November 11th. [L. '21, p. 215, § 3; L. '09, p. 466, § 59.]

§ 8507. [7227.*] State Pensions for Those Disabled in Service.

Every member of the organized militia of Washington who shall be wounded or disabled while on duty in the service of the state shall be taken care of and provided for at the expense of the state, and if permanently disabled shall receive the like pensions or reward that persons under similar circumstances in the military service of the United States receive from the United States: Provided, that no pension shall be granted for any disability received while in the service of the United States, or while proceeding to or returning from such service. Before the name of any person is placed upon the pension roll under this section proof shall be made, under such regulations as the governor may from time to time prescribe, that the applicant is entitled to such pension. [L. '17, p. 373, § 38; L. '09, p. 466, § 60; L. '95, p. 226, § 92.]

§ 8508. [7229.] Authority of Commanding Officer.

The commanding officer at any drill, parade, encampment or other duty may cause those under his command to perform any military duty he shall require, and may place in arrest for the time of such drill, parade, encampment or other duty any officer or enlisted man who shall disobey the orders of his superior officer, or in any way interrupt the exercises, and any other person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and he shall prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, or holding of huckster or auction sales, and all gambling, and remove disorderly persons beyond the limits of such parade or encampment, or beyond a distance of two miles therefrom, and he shall abate as common nuisances all disorderly places, and all such sales within such limits. Any person violating any of the provisions of this section, or any order issued in pursuance thereof, shall be guilty of a misdemeanor, and may be delivered at or before the termination of such duty to any peace officer, and shall be brought before the nearest court of competent jurisdiction for trial, and upon conviction shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or shall suffer both such fine and imprisonment.

No municipal corporation, or other authority, shall issue, grant or renew a license to any person, firm or corporation for the sale of intoxicating or spirituous liquors or beverages within a distance of three hundred feet from any armory or military reservation owned by the state of Washington or the United States and used for military purposes, or within a distance of one mile from the American Lake military reservation, and any license so attempted to be granted, issued or renewed shall be void. [L. '09, p. 466, § 62. Cf. L. '95, p. 227, § 99.]

Cited in 62 Wash. 261; 77 Wash. 161.

In an action for breach of a contract to enter into a lease, which provided that the lessee should not engage in any unlawful business, the fact may be shown that the building was within three hun-

dred feet of an armory, and therefore could not be leased for saloon purposes, under this section: *Oldfield v. Angeles Brewing & Malting Co.*, 77 Wash. 158, 137 Pac. 469.

§ 8509. [7230.*] Annual Camp or Cruise Duty—Camp and Field Duty.

The governor shall cause the organized militia to perform for at least five consecutive days in each year camp or cruise duty, field maneuvers or such other duty as in his judgment will best promote the discipline and efficiency of the force. [L. '17, p. 373, § 39; L. '09, p. 467, § 63. Cf. L. '95, p. 227, § 100.]

§ 8510. [7232.] Warning for Duty.

Orders for duty may be oral or written. Officers and enlisted men may be warned for duty as follows: Either by stating the substance of the order, or by reading the order to the person warned, or by delivering a copy of such order to such person, or by leaving a copy of such order at his last known place of abode or business, with some person of suitable age and discretion, or by sending a copy of such order or notice containing the substance thereof, to such man by mail, directed to him at his last known place of abode or business. Orders may be transmitted by telegraph or telephone. Such warning may be given by any officer or enlisted man. The officer or enlisted man giving such warning shall, when required, make a return thereof, containing the names of persons warned and the time, place and manner of warning. Such returns shall be verified on oath and shall be prima facie evidence, on the trial of any person returned as a delinquent, of the facts therein stated. [L. '09, p. 468, § 65. Cf. L. '95, p. 228, § 102.]

§ 8511. [7233.*] Exemption from Arrest While on Duty—Right of Way—Free Passage.

No person belonging to the military forces of this state shall be arrested under any civil process while going to, remaining at, or returning from any place at which he may be required to attend military duty. Any members of the organized militia parading, or performing any duty according to the law shall have the right of way in any street or highway through which they may pass and while on field duty shall have the right to enter upon, cross or occupy any uninclosed lands, or any inclosed lands where no damage will be caused thereby; any person belonging to the military forces of the state while going to or returning from any parade, encampment, drill or meeting which he may be required by law to attend shall be allowed to pass free through all toll-gates and over all toll-bridges and ferries: Provided, that the carriage of the United States mail and legitimate functions of the police and the progress and operations of fire departments shall not be interfered with thereby. [L. '17, p. 373, § 40. Cf. L. '09, p. 468, § 66. Cf. L. '95, p. 229, § 103.]

See Const., Art. X, § 5.

§ 8512. [7234.*] Interference With Employment of Guardsman—Penalty.

A person, who either by himself, or with another, willfully deprives a member of the organized militia of Washington of his employment or prevents, by himself or another such member being employed, or obstructs or annoys said member or his employer in his trade, business or employment, because he is such member or dissuades any person from enlisting in said organized militia by threat or injury to him in his employment, trade or business, in case he shall so enlist, shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days or shall suffer both such fine and imprisonment. [L. '17, p. 374, § 41; L. '09, p. 469, § 67.]

§ 8513. [7235.*] Rights of National Guardsman — Discrimination—Penalty.

No club, society, association, corporation, or organization shall by any constitution, rule, by-law, resolution, vote or regulation, or otherwise, discriminate against any member of the organized militia of Washington because of his membership in said organized militia, in respect to his eligibility to membership in such club, society, association, corporation, or organization, or in respect to his rights to retain and exercise the rights of membership therein. Any person or persons, club, society, association, corporation or organization violating or aiding, abetting or assisting in the violation of any provision of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail for a period not exceeding thirty days, or shall suffer both such fine and imprisonment. [L. '17, p. 374, § 42; L. '09, p. 469, § 68.]

§ 8514. [7236.*] Discharge by Employer—Penalty.

No member of the organized militia of Washington shall be discharged by his employer by reason of the performance of any military duties upon which he may be ordered. When any member of the organized militia of Washington is ordered upon duty which takes him from his employment he may apply upon the termination of such duty to be restored to his position and employment, and if the tour of duty shall have continued for a period not longer than three months, any employer or the officer or manager of any firm or corporation having authority to re-employ such member and failing so to do shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding three hundred dollars, or imprisoned in the county jail for a period not exceeding ninety days, or shall suffer both such fine and imprisonment. [L. '17, p. 375, § 43; L. '09, p. 470, § 69. Cf. L. '95, p. 229, § 104.]

§ 8515. [7238.*] Incorporation of Militia as Social Clubs—Property Reverting to State.

The officers, or the officers and enlisted men of any regiment, battalion, company or similar unit of the organized militia of Washington are hereby authorized to organize themselves into a corporation for social

purposes and for the purpose of holding, acquiring and disposing of such property, real or personal, as such military organizations may possess or acquire. Such corporation shall not engage in business and shall not be required to pay any filing or license fee to the state.

The dissolution or disbandment of any such unit as a military organization shall not operate to terminate the existence of the corporation, but the existence of the same shall continue for the period limited in its articles of incorporation for the benefit of such corporation.

Upon the dissolution or disbandment of any such unit which shall not have incorporated, and which shall at the time of such dissolution or disbandment possess any funds or property, the title to such funds or property shall immediately vest in the state of Washington, and the adjutant-general shall take possession thereof and dispose of the same to the best interest of the organized militia of Washington. [L. '17, p. 375, § 44; L. '15, p. 47, § 1. Cf. L. '09, p. 470, § 71; L. '95, p. 233, § 123; L. '95, p. 234, § 124.]

§ 8516. Military Tribunals.

The military tribunals of the state of Washington shall be of two kinds, viz.:

(1) Courts-martial for the trial of offenders against the military law, and

(2) Courts of inquiry for examining transaction of, or accusations or imputations against, officers or enlisted men of the organized militia of Washington.

All such courts shall be composed of commissioned officers only. All commissioned officers of the organized militia of Washington, shall be eligible for detail to such courts, but no officer will be detailed for the trial of an officer superior to himself in rank when it can be avoided. [L. '17, p. 376, § 45. Cf. L. '09, p. 471, § 72.]

§ 8517. Classes of Tribunals—Regulations and Sittings.

The military courts of the organized militia of the state of Washington, shall be of the following classes:

For the national guard:

1. General courts-martial
2. Special courts-martial
3. Summary courts-martial

For the naval militia:

1. General courts-martial
2. Summary courts-martial
3. Deck courts.

They shall be respectively constituted like and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations of the United States, and the proceedings of such courts shall follow the forms and modes of procedure prescribed for similar courts by the law and regulations of the United States. They may be convened by order specifying

that they shall sit either for the trial of specified offenses or offenders or for the trial of all offenses or offenders that may be lawfully brought before them either during a specified period of time or until further order of the convening or superior authority. [L. '17, p. 376, § 46.]

§ 8518. General Courts-martial, Composition and Jurisdiction.

General courts-martial may be convened by order of the governor and may consist of any number of officers from five to thirteen inclusive. The decision of the appointing authority as to the number of officers to compose such court shall be conclusive. When from any cause a general court-martial is reduced below the minimum of five officers, the remaining number will direct the judge advocate to report the fact to the convening authority and await further orders. Such courts shall have the power and jurisdiction to impose fines not exceeding two hundred (\$200) dollars; to sentence to forfeiture of pay and allowances; to reprimand; to dismissal or dishonorable discharge from the service; to reduction of non-commissioned officers to the ranks; to reduction in rank or rating; or any two or more of such punishments may be combined in the sentence imposed by such courts. [L. '17, p. 377, § 47.]

§ 8519. Special Courts-martial, Appointment and Jurisdiction.

In the national guard of Washington the commanding officer of each garrison, post, camp or other place, brigade, regiment, detachment, battalion or other detached command, may appoint special courts-martial for his command but such special courts-martial may in any case be appointed by a superior authority when by the latter deemed desirable. Special courts-martial shall have the power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States or of the state of Washington, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such special courts-martial shall not exceed one hundred (\$100) dollars. Such special courts-martial shall consist of any number of commissioned officers from three to five inclusive. [L. '17, p. 377, § 48.]

§ 8520. Summary Courts-martial, Appointment and Jurisdiction.

The commanding officer of each garrison, fort, post or other place, regiment or corps, detached battalion, company or other detachment of the national guard of Washington, may appoint for such place of command a summary court to consist of one (1) officer, who shall have power to administer oaths and to try enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and said court when satisfied of the guilt of such soldier; may impose fines not exceeding twenty-five (\$25) dollars for any single offense, may sentence noncommissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for similar courts of the regular army of the United States. [L. '17, p. 378, § 49.]

§ 8521. Naval Militia Summary Courts-martial.

A summary court-martial for the naval militia of Washington shall consist of three commissioned officers thereof as members and one commissioned or warrant officer as recorder and may be ordered by the governor or by the commanding officer of a naval militia brigade or battalion. The precept for the court shall specify the personnel of the court and the time and place of the meeting. The precept may authorize such court to sit on board any vessel loaned this state by the United States or on board any vessel upon which said naval militia may have been lawfully assembled or may be serving whether such assemblage or service be for the purpose of the annual or other cruise or for drill and instruction and such court may sit and act wherever said vessel may be. Such courts shall have the power to administer oaths and to try any member of said naval militia subject to military law except a commissioned or warrant officer thereof for any crime or offense made punishable by the military laws of the United States or of the state of Washington provided for naval militia and shall have the same powers of punishment as do general courts-martial, except that fines imposed by summary courts-martial shall not exceed one hundred (\$100) dollars for any single offense. [L. '17, p. 378, § 50.]

§ 8522. Deck Courts—Place of Trial and Jurisdiction.

A deck court in the naval militia of Washington shall consist of one commissioned officer thereof, of the grade of lieutenant (junior grade) or above if practicable, and may be ordered by the commanding officer of a naval militia brigade or battalion or by a naval militia officer in command of a naval militia force on shore or on any vessel loaned this state by the United States or on any vessel on which the naval militia of this state or any part thereof may be serving, and said court may sit and act wherever said vessel may be. Said court shall have power to administer oaths and to try any member or members of the enlisted personnel of the said naval militia for breaches of discipline or violations of the laws, articles, regulations, instructions and orders governing said naval militia and may impose fines not exceeding fifty (\$50) dollars for any single offense, and may sentence enlisted men to reduction in rank or rating, to forfeiture of pay and allowances, to a reprimand, to discharge with other than a dishonorable discharge, or to a fine in addition to any one of the other sentences specified. [L. '17, p. 379, § 51.]

§ 8523. Fines Imposed by Naval Militia Court—Collection and Disposition.

The amount of any fine imposed under sentence of any naval militia court on any member of the naval militia of Washington may be collected from him or may be deducted from any amount due said member as pay of any character whatsoever and all such fines so collected or withheld shall be paid to the commanding officer of the naval militia battalion or separate unassigned unit of which the person against whom such fine shall have been assessed is a member, to be used by said commanding officer to replace lost or damaged property or for such other purposes of his naval militia organization as he may decide, subject to such regulations as may be prescribed by the governor in conformity with the regu-

lations of the Navy Department thereon. Upon the receipt of a certificate from the authority convening the court as to any fine assessed by it, any disbursing officer concerned shall pay over any funds due said member not exceeding the amount of such fine to said commanding officer upon the sole receipts of said commanding officer. [L. '17, p. 379, § 52.]

§ 8524. Sentence to Confinement in Lieu of Fine.

All military courts of the organized militia of Washington, including summary courts and deck courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentence of confinement shall not exceed one day for each dollar of fine authorized. [L. '17, p. 380, § 53.]

§ 8525. Dismissals and Dishonorable Discharges—Approval.

No sentence of dismissal or dishonorable discharge from the service of the organized militia of Washington not in the service of the United States, imposed by any military court, shall be executed until approved by the governor. [L. '17, p. 380, § 54.]

§ 8526. Extent of Jurisdiction.

Military courts shall have jurisdiction, subject to the limitations imposed by law, at all times and in all places, over officers and enlisted men of the organized militia of Washington, and over members of the unorganized militia of Washington who shall be under orders for military duty, for all military offenses. [L. '17, p. 380, § 55.]

§ 8527. Warrants for Arrest—Compulsory Attendance of Witnesses.

Presidents of courts-martial, senior members of naval militia summary courts-martial and summary and deck court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses, both civil and military, and to require the production of all books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. All of such courts shall also have power to take or cause to be taken the depositions of witnesses to the same extent as have the superior courts of the state of Washington. Every judge advocate of a military court shall have the same power to issue subpoenas and subpoenas duces tecum that are possessed by the attorney of record for any party to an action pending before the superior court of the state of Washington and such military court shall have the same authority to enforce obedience to such subpoenas as is possessed by the superior courts of the state of Washington. [L. '17, p. 380, § 56.]

§ 8528. [7323.] Evidence in Military Courts.

Every military court shall have the same power to compel by subpoena, by subpoena duces tecum, and by attachment the attendance of witnesses,

both civilian and military, and the production of books, papers and documents, and to punish for contempt a witness duly subpoenaed for nonattendance or refusal to be sworn or to testify, or to produce books, papers and documents as is possessed by the superior courts of this state. Military courts shall also have power to take or cause to be taken the depositions of witnesses who cannot reasonably be produced at the trial to the same extent as the superior courts aforesaid. [L. '09, p. 490, § 86. Cf. L. '95, p. 239, § 143.]

§ 8529. [7324.*] Refusal of Witnesses to Appear and of Civil Officers to Serve Writs—Penalty.

Every person not belonging to the organized militia of Washington who, having been duly subpoenaed to appear as a witness before a military court, shall have willfully neglected or refused to appear (or refused to appear) or refused to qualify as a witness or to testify or produce documentary evidence which such person shall have been legally subpoenaed to produce, and every sheriff, constable or jailor who shall have received a lawful writ, mandate, subpoena or other process of any military court, and who shall have refused or willfully or negligently failed to execute or serve the same shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the superior court of the state of Washington; and it shall be the duty of the prosecuting attorney of any county, on the certification of the facts to him by the president or senior member of the court, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: Provided, that no witness shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him. [L. '17, p. 381, § 57. L. '09, p. 490, § 87.]

§ 8530. Power to Issue Processes and Mandates—Duty of Civil Officers to Execute—Commitments to Jail.

Military courts are empowered to issue all processes and mandates including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such writs and mandates may be directed to the sheriff of any county or the constables or marshals of any precinct, city or town, and shall be in such form as may, from time to time, be prescribed in regulations. It shall be the duty of all such officers to whom any such process or mandate may be so directed to forthwith execute the same and make return of their acts thereunder, according to the requirements of such process or mandate. The keepers and wardens of all county and city jails shall receive the bodies of persons committed by the process or mandate of any military court, and shall confine them in the manner prescribed thereby and according to law. Any person may be committed to any county or city jail for failure to pay any fine under this act and when so committed shall be credited upon such fine and assessed costs with the sum of one dollar for each day so confined. [L. '17, p. 382, § 58.]

§ 8531. [7326.] Contempt of Court.

Any person who shall be guilty of disorderly, contemptuous or insolent behavior in, or who shall use any insulting, or contemptuous, or indecorous language or expression to or before any military court, or any member of such court, in open court, tending to interrupt its proceedings, or to impair the respect due to its authority, or who shall commit any breach of the peace, or make any noise or other disturbance, directly tending to interrupt its proceedings, may be committed by warrant under the hand of the president of the court, to the jail of the city or county in which said court shall sit, there to remain without bail in close confinement, for a definite time not exceeding three days. [L. '09, p. 491, § 89. Cf. L. '95, p. 240, § 144.]

§ 8532. [7327.*] Fees and Mileage.

Fees and mileage allowed for the service of process and for civilian witnesses shall be the same as in civil actions. All expenditures necessary to carry the provisions of this act into effect are hereby authorized to be incurred, and paid out of the appropriations for the maintenance of the organized militia of Washington. [L. '17, p. 382, § 59; L. '09, p. 492, § 90.]

§ 8533. Officer, Enlisted Men and Convictions Defined.

Wherever used in the military code of the state of Washington and throughout this act the word "officer" shall be understood to designate commissioned and warrant officers, and the words "enlisted men" shall be understood to designate members of the organized militia of Washington other than commissioned or warrant officers. The convictions and punishments mentioned in the military code of the state of Washington and in this act, unless otherwise specifically designated, shall be understood to be respectively convictions and punishments by military courts. [L. '17, p. 383, § 60.]

§ 8534. Governing Articles—Art. 1. False Muster.

The organized militia of Washington shall be governed by the following articles: Art. 1. Any officer who knowingly musters as an enlisted man a person who is not an enlisted man shall be deemed guilty of knowingly making a false muster, and punished accordingly. [L. '17, p. 383, § 61.]

§ 8535. Art. 2. False Returns.

Every officer who knowingly makes a false return to any of his superior officers authorized to call for such returns, of the state of the organization under his command, or of the arms, ammunition, clothing or other stores for which he shall be responsible or accountable, shall, on conviction thereof before a court-martial, be dismissed. [L. '17, p. 383, § 62.]

§ 8536. Art. 3. Responsibility for Arms, etc.

Every officer shall be charged with the arms, accoutrements, ammunition, clothing and other military stores for which he shall have given his

receipt in writing, and shall be responsible in case of their being lost, spoiled or damaged otherwise than by unavoidable accident, or on actual service. [L. '17, p. 383, § 63.]

§ 8537. Art. 4. False Certificate.

Every officer who signs a false certificate relating to the absence or pay of an officer or enlisted man shall be dismissed from the service. [L. '17, p. 383, § 64.]

§ 8538. Art. 5. False Muster-roll.

Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster-roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the state of Washington. [L. '17, p. 383, § 65.]

§ 8539. Art. 6. Negligent Loss of Military Stores.

Any officer, who willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States or the state of Washington, shall make good the loss or damage, and shall suffer such punishment as a court-martial may direct. [L. '17, p. 384, § 66.]

§ 8540. Art. 7. Sale or Waste of Ammunition.

Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered to him shall be punished as a court-martial may direct. [L. '17, p. 384, § 67.]

§ 8541. Art. 8. Sale or Loss of Military Stores.

Any enlisted man who sells, or through neglect loses or spoils any military property of the United States or the state of Washington shall be punished as a court-martial may direct. [L. '17, p. 384, § 68.]

§ 8542. Art. 9. Disrespect Toward Commanding Officer.

Any officer or enlisted man who behaves himself with disrespect towards his commanding officer shall be punished as a court-martial may direct. [L. '17, p. 384, § 69.]

§ 8543. Art. 10. Striking or Disobeying Superior Officer.

Any officer or enlisted man who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer such punishment as a court-martial may direct. [L. '17, p. 384, § 70.]

§ 8544. Art. 11. Mutiny.

Any officer or enlisted man who begins, excites, causes, or joins in any mutiny or sedition, shall suffer such punishment as a court-martial may direct. [L. '17, p. 384, § 71.]

§ 8545. Art. 12. Presence at or Knowledge of Mutiny.

Any officer or enlisted man who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court-martial may direct. [L. '17, p. 384, § 72.]

§ 8546. Art. 13. Suppression of Disorders Among Militia Members.

Every officer shall have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or another organization and to order officers into arrest, and enlisted men into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or draws a weapon upon him, shall be punished as a court-martial may direct. [L. '17, p. 385, § 73.]

§ 8547. Art. 14. Complaints of Men Against Officers.

Any enlisted man who thinks himself wronged by any officer may complain to the immediate commander of said officer, who shall examine into said complaint and take proper measures. [L. '17, p. 385, § 74.]

§ 8548. Art. 15. Absence from Duty.

Any enlisted man who absents himself from duty without leave shall be punished as a military court may direct. [L. '17, p. 385, § 75.]

§ 8549. Art. 16. Nonattendance or Leaving Military Exercises.

Any officer or enlisted man who fails, except when prevented by sickness or other necessity, to repair at the fixed time to the appointed place of parade, exercise or other rendezvous, or goes from the same without leave, before he is dismissed or relieved, shall be punished as a military court may direct. [L. '17, p. 385, § 76.]

§ 8550. Art. 17. Hiring Substitute for Discharge of Duties.

No enlisted man shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every enlisted man found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a military court may direct. [L. '17, p. 385, § 77.]

§ 8551. Art. 18. Connivance of Officers.

Every noncommissioned or petty officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct. [L. '17, p. 385, § 78.]

§ 8552. Art. 19. Drunkenness on Duty.

Any officer who is found drunk on duty shall be dismissed from the service. Any enlisted man who so offends shall suffer such punishment as a military court may direct. [L. '17, p. 385, § 79.]

§ 8553. Art. 20. Sleeping or Abandoning Sentinel Duty.

Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court-martial may direct. [L. '17, p. 386, § 80.]

§ 8554. Art. 21. False Alarm in Camp.

Any officer, who by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer such punishment as a court-martial may direct. [L. '17, p. 386, § 81.]

§ 8555. Art. 22. Cowardice and Pillage.

Any officer or enlisted man who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard which he is commanded to defend, or speaks words inducing another to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court-martial may direct. [L. '17, p. 386, § 82.]

§ 8556. Art. 23. Desertion.

Every enlisted man who deserts, shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such enlisted man shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried. [L. '17, p. 386, § 83.]

§ 8557. Art. 24. Quitting Post Prior to Acceptance of Resignation.

Any officer who, having tendered his resignation, quits his post, or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of acceptance of the same, shall be deemed and punished as a deserter. [L. '17, p. 386, § 84.]

§ 8558. Art. 25. Persuasion to Desert.

Any officer or enlisted man who advises or persuades any other officer or enlisted man to desert shall suffer such punishment as a court-martial may direct. [L. '17, p. 386, § 85.]

§ 8559. Art. 26. Destruction of Property.

All officers and enlisted men are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, or maliciously destroys any property whatsoever belonging to inhabitants of the United States or of the state of Washington, shall, besides such other penalties as he may be liable to by law, be punished as a court-martial may direct. [L. '17, p. 386, § 86.]

§ 8560. Art. 27. Fraud.

Any member of the organized militia of Washington

(1) Who makes or causes to be made any claim against the United States or the state of Washington, or any officer thereof, knowing such claim to be false or fraudulent; or

(2) Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or the state of Washington, or any officer thereof, knowing such claim to be false or fraudulent; or

(3) Who enters into any agreement or conspiracy to defraud the United States or the state of Washington, by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

(4) Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Washington, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing or other paper; knowing the same to contain any false or fraudulent statement; or

(5) Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Washington or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

(6) Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Washington, or any officer thereof, forges or counterfeits, or procures or advises the forgery or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

(7) Who, having charge, possession, custody, or control of any money or other property of the United States or of the state of Washington, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(8) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state of Washington, furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States or the state of Washington; or

(9) Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance [ordnance], arms, ammunition, equipments, clothing, subsistence, stores, money, or other property of the United States or of the state of Washington, furnished or intended for the military service thereof; or

(10) Who knowingly purchases or receives in pledge for any obligation or indebtedness, from any enlisted man, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence, stores, or other property of the United States or the state of Washington, such enlisted man, officer or other person not having lawful right to sell or pledge the same;

Shall on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may direct or by any or all of said penalties.

And if any person having committed any of the offenses aforesaid while a member of the organized militia of Washington, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed. [L. '17, p. 387, § 87.]

§ 8561. Art. 28. Conduct Unbecoming an Officer.

Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. [L. '17, p. 389, § 88.]

§ 8562. Art. 29. Cognizance of all Crimes Other Than Capital.

All crimes not capital and all disorders and neglects, of which officers and enlisted men may be guilty, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, may be taken cognizance of by a military court, as provided herein, according to the nature and degree of the offense, and punished at the discretion of such court. [L. '17, p. 389, § 89.]

§ 8563. Art. 30. Arrest of Officer—Service of Charges—Time of Trial.

When an officer is put in arrest for the purpose of trial, the officer by whose order he is arrested shall see that a copy of the charge on which he is to be tried is served upon him within ten days after his arrest, and that he is brought to trial within twenty days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said twenty days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest. [L. '17, p. 389, § 90.]

§ 8564. Art. 31. Judge Advocates.

For each general or special court-martial of the national guard and for each general or summary court-martial of the naval militia, the governor shall appoint a judge advocate. [L. '17, p. 389, § 91.]

§ 8565. Art. 32. Procedure Where Insufficient Officers for Court.

When the requisite number of officers to form a general court-martial is not present at any station or detachment the governor shall in cases which require the cognizance of such court, thereupon order a court to be assembled at the nearest place where such trial can be conveniently held, and shall order the accused, with necessary witnesses, to be transported to the place where the said court shall be assembled. [L. '17, p. 389, § 92.]

§ 8566. Art. 33. Trial of Officers.

Officers shall be tried only by general courts-martial. [L. '17, p. 390, § 93.]

§ 8567. Art. 34. Oath of Members of Court-martial.

The judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation:

"You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you between the state of Washington and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the organized militia of the state of Washington, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God." [L. '17, p. 390, § 94.]

§ 8568. Art. 35. Oaths of Judge Advocate—Witnesses, Reporter, etc.

When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the judge advocate, an oath or affirmation in the following form:

"You, A. B., do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form:

"You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form:

"You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form:

"You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

In case of affirmation the closing sentence of adjuration will be omitted. [L. '17, p. 390, § 95.]

§ 8569. Art. 36. Punishment for Contempt of Court.

A military court may punish, at discretion, any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder. [L. '17, p. 391, § 96.]

§ 8570. Art. 37. Conduct of Court Members.

All members of a court-martial are to behave with decency and calmness. [L. '17, p. 391, § 97.]

§ 8571. Art. 38. Challenges to Members of Court.

Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof and shall not receive a challenge to more than one member at a time. [L. '17, p. 391, § 98.]

§ 8572. Art. 39. Prisoner Standing Mute.

When a prisoner, arraigned before a military court, from obstinacy and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty. [L. '17, p. 391, § 99.]

§ 8573. Art. 40. Protection of Rights of Prisoner.

The judge advocate shall prosecute in the name of the state of Washington, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any witness, and to any question to the prisoner the answer to which might tend to incriminate himself. [L. '17, p. 391, § 100.]

§ 8574. Art. 41. Oath of Witnesses.

All persons who give evidence before a military court shall be examined on oath, or affirmation, in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God." [L. '17, p. 392, § 101.]

§ 8575. Art. 42. Continuances.

A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often as may appear to be just. [L. '17, p. 392, § 102.]

§ 8576. Art. 43. Voting by Court Members.

Members of a court-martial, in giving their votes, shall begin with the youngest in commission. [L. '17, p. 392, § 103.]

§ 8577. Art. 44. Suspension of Pay.

When a court-martial suspends an officer from command it may also suspend his pay and emoluments for the same time, according to the nature of his offense. [L. '17, p. 392, § 104.]

§ 8578. Art. 45. Twice in Jeopardy.

No person shall be tried a second time for the same offense. [L. '17, p. 392, § 105.]

§ 8579. Art. 46. Period of Limitation Against Trial.

No person shall be liable to be tried and punished by a military court for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period. [L. '17, p. 392, § 106.]

§ 8580. Art. 47. Execution of Sentence.

No sentence of a general court-martial shall be carried into execution until the same shall have been approved by the governor. [L. '17, p. 392, § 107.]

§ 8581. Art. 48. Judge Advocate's Report to Adjutant-general.

Every judge advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the adjutant-general. [L. '17, p. 392, § 108.]

§ 8582. Art. 49. Copy of Proceedings and Sentence.

Every person tried by a general court-martial shall, upon proper demand therefor be entitled to a copy of the proceedings and sentence of such court. [L. '17, p. 393, § 109.]

§ 8583. Art. 50. Court of Inquiry.

A court of inquiry to examine into the nature of any transaction of, or accusation or imputation against, any officer or enlisted man may be ordered by the governor or by the commanding officer of a naval militia brigade or battalion. [L. '17, p. 393, § 110.]

§ 8584. Art. 51. Oath of Members of Court and Recorder.

The recorder or judge advocate of a court of inquiry shall administer to the members the following oath:

"You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God."

After which the president of the court shall administer to the recorder or judge advocate the following oath:

"You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God." [L. '17, p. 393, § 111.]

§ 8585. Art. 52. Powers of Court and Recorder.

A court of inquiry, and the recorder or judge advocate thereof, shall have the same power to summon and examine witnesses as is given to general courts-martial and the judge advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before general courts-martial, and the party accused shall be permitted to examine and

cross-examine them, so as fully to investigate the circumstances in question. [L. '17, p. 393, § 112.]

§ 8586. Art. 53. Opinion on Merits of Case.

A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so. [L. '17, p. 393, § 113.]

§ 8587. Art. 54. Authentication of Proceedings.

The proceedings of a court of inquiry must be authenticated by the signatures of the recorder or judge advocate and the president thereof and delivered to the adjutant-general or convening authority. [L. '17, p. 393, § 114.]

§ 8588. Art. 55. Admission of Proceedings as Evidence in Military Court.

The proceedings of a court of inquiry may be admitted as evidence by a military court, in cases not extending to the dismissal of an officer: Provided, that the circumstances are such that oral testimony cannot be obtained. [L. '17, p. 394, § 115.]

§ 8589. Art. 56. Highest Officer in Combined Units to Command.

If, upon marches, guards, or in quarters, different organizations of the national guard of Washington, happen to join or do duty together, the officer highest in rank of the line by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful in the service, unless otherwise specially directed by the governor, according to the nature of the case. [L. '17, p. 394, § 116.]

§ 8590. Art. 57. Inventory of Effects of Deceased Militiaman.

In case of death of any enlisted man, his commanding officer shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the adjutant-general. [L. '17, p. 394, § 117.]

§ 8591. Art. 58. Power of Punishment in Naval Militia.

The commanding officer of a naval militia brigade or battalion and the naval militia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the state of Washington or on any vessel on which such forces are training shall have power, without trial by courts-martial, to impose upon members of the naval militia of Washington the punishments which the commanding officer of a vessel of the navy is authorized by law to impose. [L. '17, p. 394, § 118.]

§ 8592. Naval Militia Allowances for Incidental Expenses.

Each commanding officer of the naval militia of Washington shall be entitled to receive an allowance for the incidental expenses of his command, payable quarterly in advance, in like manner and at the same times as similar allowance is made to commanding officers of the national guard of Washington, according to the following schedule: Divisions, marine corps companies and like units, not to exceed twenty-five (\$25) dollars per month; bands, not to exceed fifteen (\$15) dollars per month;

battalions and like units, not to exceed twenty-five (\$25) dollars per month; brigades and like units, not to exceed twenty-five (\$25) dollars per month.

Such allowance for incidental expenses shall be accounted for, and expenditures therefrom evidenced, in the same manner as is provided for similar allowances to commanding officers of organizations of the national guard of Washington. [L. '17, p. 394, § 119.]

§ 8593. [7328.*] Rifle Ranges.

Under the direction of the governor the adjutant-general shall, at the expense and in the name of the state, buy or lease, establish, equip, maintain and control such rifle ranges and issue such ammunition, transportation and supplies as may be necessary to provide each organization of the organized militia of Washington with adequate means and opportunity for thorough instruction in rifle practice. [L. '17, p. 395, § 120; L. '09, p. 492, § 91.]

§ 8594. [7329.*] Prizes for Marksmanship.

The adjutant-general is authorized to expend from the appropriations for the maintenance of the organized militia of Washington the sum of five hundred dollars per annum for prizes for marksmanship under such regulations as may be prescribed by the governor. [L. '17, p. 395, § 121; L. '09, p. 492, § 92. Cf. L. '95, p. 250, § 169.]

§ 8595. [7330.*] Articles of War and Regulations of United States Army—Death Penalty on Approval by Governor.

Whenever any portion of the militia of the state shall be on duty under or pursuant to orders of the governor, or whenever any part of the militia shall be ordered to assemble for duty in time of war, insurrection, invasion or imminent danger thereof, breach of the peace, tumult, riot, public danger or resistance to process, the articles of war and regulations for the government of the army of the United States, so far as applicable and not in conflict with any rule or regulation herein prescribed, and with such modifications as the governor may prescribe, shall be considered in force and regarded as a part of this act until such forces shall be duly relieved from such duty: Provided, that organizations of the naval militia of Washington under such circumstances shall be similarly subject to the articles for the government of the navy of the United States and to navy regulations, naval instructions, and general orders of the United States navy. No punishment under this section, extending to the taking of life, shall in any case be inflicted except in time of actual war, invasion or insurrection declared to exist by proclamation of the President of the United States or by the governor of this state, and then only after the approval of such sentence by the governor. [L. '17, p. 395, § 122; L. '09, p. 492, § 93.]

§ 8596. [7331.*] Promulgation of General Orders.

The governor shall promulgate in general orders such rules and regulations and amendments thereto not inconsistent with law as he may deem necessary. Such rules and regulations, when so promulgated, shall have

the same force and effect as though herein enacted. [L. '17, p. 396, § 123; L. '09, p. 493, § 94. Cf. L. '95, p. 251, § 171.]

§ 8597. [7332.*] Exemption from Jury Duty and Poll Tax.

Every officer and enlisted man of the organized militia of Washington shall be exempt from all jury duty and from the payment of poll tax during the term of his service therein. Every person employing an enlisted man of the organized militia of Washington having not less than six months' continuous service therein, and having so continuously employed him for a period of not less than six months prior to the time of claiming such exemption, shall be exempt from jury duty: Provided, that if such member of the organized militia is employed by a firm or corporation, one member only of such firm or officer of such corporation shall be exempt from jury duty for each member of the organized militia so employed: And provided further, that this exemption shall extend only to members of firms and to officers of corporations actively engaged in conducting the business of such corporations, and shall not extend to directors and stockholders in such corporations merely as such. [L. '17, p. 396, § 124; L. '09, p. 493, § 95; L. '95, p. 252, § 174.]

"All" persons liable for poll tax. See *infra*, § 11242.

§ 8598. [7334.*] Regulations Governing Armories, Rifle Ranges, etc.

The commander-in-chief shall promulgate in general orders such regulations for the use of armories, rifle ranges, and other real property owned or leased by the state for military purposes as may be proper: Provided, that no armory shall be used for any other than a strictly military purpose without the recommendation of the officer in charge thereof: And provided further, that all civilian rifle clubs affiliated with the National Rifle Association of America shall be permitted the use of the rifle ranges in the armories owned by the state at least one night each week under such regulations as the commander-in-chief may direct: And provided further, that one room shall be set aside for the exclusive use of all veteran organizations subject to the direction of the officer in charge thereof; and the members of all veteran organizations and their auxiliaries shall have, at all times, access to said room, and said room shall be provided with furniture, heat, light and janitor service out of the maintenance item from the military fund, and said veteran organizations and their auxiliaries shall bear no expense or expenses whatever in connection with the maintenance, heating, lighting and furnishing of such room: And provided further, that all revenue derived from rentals of these armories shall be turned in to the state treasurer under such regulations as the commander-in-chief may direct and credited to the military fund. [L. '17, p. 31, § 1; L. '09, p. 494, § 97. Cf. L. '03, p. 215, §§ 19, 20; L. '07, p. 87, § 11.]

Cited in 60 Wash. 305; 68 Wash. 331, 337.

This section does not relinquish the state's governmental functions or amount to the assumption of a private enterprise,

where the armory was not used for entertainment purposes as a business venture: *Riddock v. State*, 68 Wash. 329, 123 Pac. 450.

§ 8599. [7335.] Lease of Property by the National Guard.

All armories and rifle ranges and all property, real or personal, used by the national guard and not owned by the state of Washington or the United States, shall be leased or rented to the state upon such terms and conditions as shall be approved by the commander-in-chief. [L. '09, p. 494, § 98.]

§ 8600. Condemnation or Special Assessment Against State Military Realty—Notice.

Whenever any land, real estate, premises or other property owned by the state of Washington and used for military purposes shall be involved in or affected by any eminent domain, condemnation, local improvement or other special assessment proceeding whatsoever, in addition to the notices elsewhere provided by law, the officer or board required by law to give notice of such proceedings shall cause to be served upon the adjutant-general at least twenty days in advance of any hearing therein, a written notice, setting forth the nature of the proceedings, the description of such state property sought to be involved therein or affected thereby and the amount of the proposed assessment therein. [L. '17, p. 397, § 125.]

§ 8601. [7337.] Wrongful Taking of Government Property from Armory.

Any enlisted man taking any government property from an armory without the written consent of his company commander shall be considered as appropriating government property to his own use and may be tried in any court of competent jurisdiction and on conviction thereof shall suffer a fine in any sum, not exceeding one hundred dollars, together with the cost of such government property, or imprisonment in the county jail for a period not exceeding sixty (60) days, or shall suffer both such fine and imprisonment. [L. '09, p. 494, § 100.]

§ 8602. [7338.*] Revenue—Tax Levy for Military Purposes.

For the purpose of raising revenue for the organized militia of Washington there is hereby levied, and the proper officers shall collect, a tax of not to exceed thirty one hundredths (30/100) of one mill or so much thereof as may be necessary, upon all property in the state subject to taxation for the present fiscal year and for each fiscal year thereafter. The revenue so raised shall be paid into the state treasury and shall be converted into a special military fund, from which special fund shall be paid the military expenses authorized by the military code of Washington, except as otherwise provided. [L. '17, p. 397, § 126; L. '07, p. 226, § 7. Cf. L. '95, p. 252, § 176; L. '03, p. 324, § 18.]

This and the next section were expressly excepted from the repeal of former military codes: See L. '09, p. 495, § 101.

§ 8603. [7339.] Military Fund.

The revenue raised under the provisions of this act shall be paid into the state treasury and be converted into a special military fund, from which special fund shall be paid the expenses authorized by this act, except as otherwise provided. [L. '95, p. 252, § 177.]

See note to last section.

CHAPTER III.

THE SONS OF VETERANS.

§ 8604. [7340.] Sons of Veterans—Issue of Arms to.

The adjutant-general of the state of Washington may, in his discretion and under the regulations prescribed in this chapter, issue to any regularly organized camp of the order of Sons of Veterans in the state of Washington any arms and accoutrements belonging to the state which are not required for the use of the national guard. [L. '90, p. 481, § 1; 1 H. C., § 3079.]

§ 8605. [7341.] Application for Arms—How Made, and Requisites of.

Before any arms or accoutrements are issued, as provided in the foregoing section, the captain of the camp desiring such arms or accoutrements shall make a written application for the same to the adjutant-general, which application shall be accompanied by a list of the names of the officers and members of such camp. The captain shall also give any additional information in regard to said camp which may be required by the adjutant-general. [L. '90, p. 481, § 2; 1 H. C., § 3080.]

§ 8606. [7342.] Captain Receiving Arms, etc., to Give Bond.

The captain of any camp of the order of Sons of Veterans which shall receive arms or accoutrements as provided in this chapter shall give a bond for the return of the same, payable to the state of Washington, in such sum as the adjutant-general may require, which bond shall be signed by two good and sufficient sureties, who shall be property holders and citizens of the state of Washington, and shall be approved by the adjutant-general. [L. '90, p. 482, § 3; 1 H. C., § 3081.]

§ 8607. [7343.] Captain to Return Arms, etc., When and to Whom.

The captain of any camp of the order of Sons of Veterans which shall receive arms or accoutrements under the provisions of this chapter shall return the same to the adjutant-general upon demand or upon the disbanding of said camp. [L. '90, p. 482, § 4; 1 H. C., § 3082.]

Millers. See "Frauds," § 5843.

MINES AND MINERALS.

TITLE LIX.

MINES AND MINERALS.

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CHAPTER I.

MINING CORPORATIONS.

§ 8608. [7344.] Right of Eminent Domain Extended to Mining Corporations.

The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works. [L. '97, p. 95, § 1.]

For right to appropriate water for mining purposes, see *infra*, §§ 11575, 11576.

§ 8609. [7345.] Right to Enter on Lands to Survey, etc.

Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [L. '97, p. 95, § 2.]

§ 8610. [7346.] Manner of Appropriation.

Every such corporation shall have the right to appropriate real estate or other property for right of way in the same manner and under the same procedure as now is or may be hereafter provided by the law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [L. '97, p. 96, § 3.]

See *supra*, § 921 et seq., procedure in eminent domain by private corporations.

§ 8611. [7347.] No Subscription to Stock of Mining Corporation is Necessary.

In incorporations already formed, or which may hereafter be formed under this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and developing of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust, or other instrument vest or have vested in such corporation for mining purposes; such subscription to be deemed to have been made

on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: Provided, that the greater portion of said amount of capital stock shall have been so subscribed; and provided further, that this section shall not be construed as to prohibit the stockholders of any corporation formed, or which may be formed for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contracts. [L. '66, p. 65, § 28; L. '69, p. 339, § 28; L. '73, p. 407, § 26; Cd. '81, § 2446; 1 H. C., § 1588.]

Cited in 19 Wash. 100, 497; 64 Wash. 300; 76 Wash. 619. mining companies: Davies v. Ball, 64 Wash. 292, 116 Pac. 833.

This section does not apply to coal

§ 8612. [7348.] Stockholder's Right to Enter and Examine Property.

Any owner of stock to the amount of one thousand shares, in any corporation doing business under the laws of the state of Washington for the purpose of mining, shall, at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or under ground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation at any time during the hours of business or labor; and the presentation of certificates of stock in the corporation of the amount of one thousand shares, to the officer or person in charge, shall be prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation. [L. '01, p. 258, § 1.]

§ 8613. [7349.] Violations and Penalty.

Any violations of any provisions of this act by any officer or agent of such corporation shall constitute a misdemeanor, and upon conviction thereof every such officer or agent shall be fined in a sum not greater than two hundred dollars for each offense. [L. '01, p. 259, § 2.]

"Act" in this section refers to §§ 8612—8614.

§ 8614. [7350.] Failure to Furnish Statement Annuls Franchise.

In case such corporation shall fail and neglect to furnish the statement provided for in section 8612 within sixty days from and after such demand, the franchise of said corporation may be annulled in any action brought by such stockholder in the name of the state of Washington, in any superior court in the county in which said mining property is situated or in which the principal place of business of the corporation may be located. [L. '01, p. 259, § 3.]

CHAPTER II.

LOCATION AND POSSESSION OF MINING LODES.

Lease of state mineral lands: See *supra*, §§ 8018—8035.

§ 8615. [7351.] Mining Claim Governed by Law in Force at Time of Location.

All mining claims upon veins or lodes of quartz or other rock in place, bearing gold, silver, or other valuable mineral deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of such location. [L. '88, p. 160, § 1; 1 H. C., § 2210.]

Compare L. '73, pp. 444—446; L. '75, pp. 126, 127; L. '77, p. 335.

See act of congress May 10, 1872; L. '63, pp. 490, 491; L. '67, pp. 146, 147; L. '69, pp. 386—388.

§ 8616. [7352.] Form and Extent of Mining Claim Limited.

A mining claim located upon any vein or lode of quartz or other rock in place, bearing gold, silver, or other valuable mineral deposits after the approval of this act by the governor whether located by one or more persons, may equal, but shall not exceed, fifteen hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claims located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulations to less than fifty feet of surface on each side of the middle of such vein or lode, at the surface, excepting where adverse rights, existing at the date of the approval of this act, shall make such limitations necessary. The end lines of each claim shall be parallel to each other. [L. '88, p. 160, § 2; 1 H. C., § 2211.]

"Act" approved February 2, 1888.

§ 8617. [7353.] Right of Possession of Mining Claims.

The locators of all mining locations heretofore made, or hereafter made under the provisions of this act, on any mineral vein, lode, or ledge on the public domain, and their heirs and assigns, so long as they comply with the laws of the United States and the state and local laws relating thereto, shall have the exclusive right to the possession and enjoyment of all surface included within the lines of their location, and of all veins, lodes, and ledges throughout their entire depth, and the top or apex of which lies within the surface lines of such location, extending downward vertically, although such veins, lodes, or ledges may so far depart from the perpendicular in their course downward as to extend outside of the vertical side line of said surface location. [L. '88, p. 160, § 3; 1 H. C., § 2212.]

"This act" refers to §§ 8615—8621.

See *supra*, § 2703, robbery of deposits or appliances.

See *supra*, § 2711, fraudulent sale of.

See *supra*, §§ 2712—2714, false assays.

Colocators and Cotenants: See Rem. Con. Min. Co. v. Yarwood, 27 Wash. ington's Digest, Mines, § 10; Canyon 271, 67 Pac. 749, 91 Am. St. Rep.

841; Yarwood v. Johnson, 29 Wash. 643, 70 Pac. 123; Kittilsby v. Vevelstad, 103 Wash. 126, 173 Pac. 744.

Rights Acquired: See Remington's Digest, Mines, §§ 10-1, 11; State v. Praul, 57 Wash. 198, 106 Pac. 763; Phoenix Min. & Mill Co. v. Scott, 20 Wash. 48, 54 Pac. 777; Davis v. Dennis, 43 Wash. 54, 85 Pac. 1079.

Actions to Determine and Establish Rights: See Remington's Digest, Mines, § 12; Stolp v. Treasury Gold Min. Co., 38 Wash. 619, 80 Pac. 817; National Milling & Min. Co. v. Piccolo, 54 Wash. 617, 104 Pac. 128; Knutson v. Fredlund, 56 Wash. 634, 106 Pac. 200.

See, also, Harvey v. Laurier Min. Co., 106 Wash. 192, 179 Pac. 864.

RIGHTS AND REMEDIES OF OWNERS: See Remington's Digest, Mines, §§ 13—15.

Title in General: Donahue v. Johnson, 9 Wash. 187, 37 Pac. 322.

Recovery of Possession of Lands or Mines: Davis v. Dennis, 43 Wash. 54, 85 Pac. 1079.

Quieting Title: Cedar Canyon Con. Min. Co. v. Yarwood, 27 Wash. 271, 67 Pac.

749, 91 Am. St. Rep. 841; Prospectors' Development Co. v. Brook, 32 Wash. 315, 73 Pac. 376; Lauman v. Hooper, 37 Wash. 382, 79 Pac. 953; Protective Min. Co. v. Forest City Min. Co., 51 Wash. 643, 99 Pac. 1033.

See, also, Oroville International Salts Co. v. Rayburn, 104 Wash. 137, 176 Pac. 14.

Location of mining claims. 7 **L. R. A. (N. S.)** 765.

Sufficiency of discovery of mineral to support location of mining claim. 15 **Ann. Cas.** 628.

Right of corporation to locate mining claim. 7 **L. R. A. (N. S.)** 816.

Adverse possession as mode of acquisition of title to mines or minerals. 6 **Ann. Cas.** 142; **Ann. Cas.** 1912D, 1199; **Ann. Cas.** 1917E, 641; 13 **A. L. R.** 372.

What possession by owner of surface estate constitutes adverse possession of severed mineral estate. 140 **Am. St. Rep.** 941.

Rights of locators prior to discovery of mineral in mining claims. 139 **Am. St. Rep.** 154.

§ 8618. [7354.] Work Required on Mining Claims.

In order to hold the possessory right to a location of a mine not less than one hundred dollars' worth of work must be performed or improvements made thereon annually: Provided, that the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of location of such claim. [L. '88, p. 61, § 4; 1 H. C., § 2213; L. '93, p. 75, § 1.]

Character of work or expenditures which may be credited to annual

assessment or improvement work. 14 **A. L. R.** 1463.

§ 8619. [7355.] Recorder of Mining Districts—Records of.

The miners of each mining district may elect a recorder of the said district. When so elected, such recorder shall provide books of records, in which it shall be his duty to record all notices of locations or transfers, bonds, conveyances, or assignments of mining claims within his district when the same shall be presented to him for record. Such records are hereby declared to be public records, open to inspection, and shall have the same force and effect, so far as notice is concerned, as the records of deeds and mortgages in this state. [L. '88, p. 161, § 5; 1 H. C., § 2214.]

§ 8620. [7356.] Election, Powers, and Duty of Recorder.

When a recorder shall be elected, as provided in the last preceding section of this chapter, he shall hold his office for a term of one year from the date of his election, and until his successor is elected and qualified. He shall, immediately after his election, file with the county auditor of the county in which his district is situated, an oath to the effect that he

will faithfully discharge the duties of his office. He shall be a certified officer, and certified copies of his records shall have the same force and effect as similar papers certified by other officers of this state. His fees shall be the same as those of the county auditor for similar work, and should the office of recorder in any mining district at any time become vacant, it shall be the duty of the person last holding said office, and of any person into whose possession the same may come, to forthwith transmit all the records, papers, and files of the said office to the auditor of the county in which such district is located, and such auditor shall thereafter keep the same as part of the records and files of his office. [L. '88, p. 161, § 6; 1 H. C., § 2215.]

§ 8621. [7357.] Location Notices, etc., to be Recorded by County Auditor.

Inasmuch as the last two preceding sections of this chapter leave the election of a recorder for a mining district optional with the miners thereof, all location notices, bonds, assignments, and transfers of mining claims shall be recorded in the office of the county auditor of the county where the same is situated, within thirty days after the execution thereof: Provided, that all records of mining claims and of assignments, deeds, bonds, and transfers heretofore made by any recorder of any mining district, or by any county auditor, are hereby declared to be valid, and to have the same force and effect as records made in pursuance of the provisions of this act. [L. '88, p. 161, § 7; 1 H. C., § 2216.]

"This act," refers to §§ 8615—8621.

See, also, next section.

§ 8622. [7358.] Notice of Location to be Recorded.

The discoverer of a lode shall within ninety (90) days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course of the lode and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. [L. '99, p. 69, § 1.]

Cited in 56 Wash. 636; 57 Wash. 575; Min. Co. v. Piccolo, 54 Wash. 617, 104 Pac. 128; Knutson v. Fredlund, 56 Wash. 634, 106 Pac. 200.

Certificate or Notice: See Remington's Digest, Mines, § 6-1; National Milling &

§ 8623. [7359.] Location.

Before filing such notice for record, the discoverer shall locate his claim by first sinking a discovery shaft upon the lode, to the depth of ten (10) feet from the lowest part of the rim of such shaft at the surface, and shall post at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and shall mark the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three (3)

feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines. [L. '99, p. 69, § 2.]

Cited in 85 Wash. 170; 94 Wash. 625.

Discovery of Vein or Lode: See Remington's Digest, Mines, § 4; Cedar Canyon Con. Min. Co. v. Yarwood, 27 Wash. 271, 67 Pac. 749, 91 Am. St. Rep. 841; Yarwood v. Johnson, 29 Wash. 643, 70 Pac. 123; Protective Min. Co. v. Forest City Min. Co., 51 Wash. 643, 99 Pac. 1033.

Extent and Boundaries of Vein or Lode Claim: See Remington's Digest, Mines, § 5; Cedar Canyon Con. Min. Co. v. Yarwood, 27 Wash. 271, 67 Pac. 749, 91 Am. St. Rep. 841; Quilp Gold Min. Co.

v. Republic Mines Corporation, 96 Wash. 39, 165 Pac. 57.

Requisites and Validity of Vein or Lode Location—Marking Boundaries on the Ground: See Remington's Digest, Mines, § 6; Union Min. & Mil. Co. v. Leitch, 24 Wash. 585, 64 Pac. 829, 85 Am. St. Rep. 961; Protective Min. Co. v. Forest City Min. Co., 51 Wash. 643, 99 Pac. 1033; Gold Creek Antimony Mines & Smelter Co. v. Perry, 94 Wash. 624, 162 Pac. 996.

Rights under tunnel-site locations. 53 L. R. A. 794.

§ 8624. [7360.] Tunnel Equivalent to Shaft.

Any open cut or tunnel having a length of ten (10) feet, which shall cut a lode at the depth of ten (10) feet below the surface, shall hold such lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto. [L. '99, p. 70, § 3.]

§ 8625. [7361.] "Lode" Defined.

The term "lode" as used in this act shall be construed to mean ledge, vein or deposit. [L. '99, p. 70, § 4.]

"Act," in this section, refers to §§ 8622—8635.

Lodes or veins within placer claims. 50 L. R. A. 289.

What is top or apex of "vein" or "lode." 1 A. L. R. 418.

Right to follow vein or dip beyond surface lines. 53 L. R. A. 491.

§ 8626. [7362.] Amended Certificate of Location.

If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this act, such locator or his assigns may file an amended certificate of location, subject to the provisions of this act, regarding the making of new locations. [L. '99, p. 70, § 5.]

"Act," in this section, refers to §§ 8622—8635.

§ 8627. [7363.] Proof of Assessment Work by Affidavit.

Within thirty (30) days after the expiration of the period of time for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf

such work or improvement was made or some person for him knowing the facts, shall make and record in the office of the county auditor of the county, wherein such claims are situate an affidavit or oath of labor performed on such claim. Such affidavit shall state the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law or by rules of mining districts made thereon. [L. '99, p. 70, § 6.]

Development and Assessment Work: See Remington's Digest, Mines, § 7; Yarwood v. Johnson, 29 Wash. 643, 70 Pac. 123; Sexton v. Washington Min. & Milling Co., 55 Wash. 380, 104 Pac. 614.

The fact that the major part of defendant's improvements were made after

plaintiff's action was commenced is immaterial, where no attempt was made by plaintiff to prevent extensive improvements made in good faith: Spokane Portland Cement Co. v. Larson, 71 Wash. 301, 128 Pac. 641.

§ 8628. [7364.] Affidavit, Prima Facie Evidence of Assessment Work.

Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evidence accordingly by all the courts of this state. [L. '99, p. 71, § 7.]

§ 8629. [7365.] Relocation, Requirements for.

The relocation of a forfeited or abandoned quartz or lode claim shall only be made by sinking a new discovery shaft and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocater may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location monument shall be erected and the location certificate shall state if the whole or any part of the new location is located as abandoned property. [L. '99, p. 71, § 8.]

Cited in 54 Wash. 622; 57 Wash. 575; 85 Wash. 168; 110 Wash. 122.

Abandonment: See Remington's Digest, Mines, § 8; Davis v. Dennis, 43 Wash. 54, 85 Pac. 1079; Paragon Min. & Development Co. v. Stevens County Exp. Co., 45 Wash. 59, 87 Pac. 1068; Spokane Portland Cement Co. v. Larson, 71 Wash. 301, 128 Pac. 641.

Forfeiture: See Remington's Digest, Mines, § 8-1; Protective Min. Co. v. Forest City Min. Co., 51 Wash. 643, 99 Pac. 1033; Knutson v. Fredlund, 56 Wash. 634, 106 Pac. 200; Florence-Rae Copper Co. v. Kimbel, 85 Wash. 162, 147 Pac. 881.

Relocation: See Remington's Digest, Mines, § 9; Yarwood v. Johnson, 29 Wash. 643, 70 Pac. 123; Lauman v.

Hoofer, 37 Wash. 382, 79 Pac. 953; Protective Min. Co. v. Forest City Min. Co., 51 Wash. 643, 99 Pac. 1033; National Milling & Min. Co. v. Piccolo, 54 Wash. 617, 104 Pac. 128 (overruled); Florence-Rae Copper Co. v. Kimbel, 85 Wash. 162, 147 Pac. 881.

A relocation notice is insufficient if it fails to recite that the property is located on abandoned property: Newport Min. Co. v. Bead Lake Gold-Copper Min. Co., 110 Wash. 120, 188 Pac. 27.

When mining claim subject to relocation as abandoned or forfeited. 68 L. R. A. 833.

Respective rights of relocators of mining claim before, and after abandonment or forfeiture, of senior location. 16 L. R. A. (N. S.) 162.

§ 8630. [7366.] No Discovery Shafts West of Cascades.

The provision herein, relating to discovery shafts, shall not apply to any mining location west of the summit of the Cascade Mountains. [L. '99, p. 71, § 9.]

Cited in 54 Wash. 622; 57 Wash. 575. Relocators of abandoned mining claims west of the summit of the Cascade Mountains need not sink a discovery shaft, under this section (overruling *Id.*, 54 Wash. 617, 104 Pac. 128); *National Milling & Min. Co. v. Piccolo*, 57 Wash. 572, 107 Pac. 353.

§ 8631. [7367.] Location of Placer Claims—Procedure.

The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

First. He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (a) the name of the claim; (b) the name of the locator or locators; (c) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (d) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Second. Within thirty (30) days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced.

Third. Within sixty (60) days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten (10) dollars' worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim: Provided, however, that nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Fourth. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done. [L. '99, p. 71, § 10; L. '01, p. 292, § 1.]

Cited in 71 Wash. 305.

Liabilities for Injuries: See Remington's Digest, Mast. & Ser., § 45.

Location and discovery of placer

claims. 7 L. R. A. (N. S.) 809, 831, 862.

Relocation of placer claims as abandoned or forfeited. 68 L. R. A. 848.

§ 8632. [7368.] Affidavit, Prima Facie Evidence of Assessment Work.

The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceedings with the same effect as the original and the provisions of sections 8627 and 8628 shall apply to placer claims as well as lode claims. [L. '99, p. 72, § 11.]

§ 8633. [7369.] Application of Act.

All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of this act in so far as the same are respectively applicable thereto. [L. '99, p. 72, § 12.]

"Act," in this section, refers to §§ 8622—8635.

§ 8634. [7370.] Mining District may Make Rules.

Any mining district organized in the state of Washington in accordance with the laws of the United States, shall have power to make rules and regulations for such mining district, providing such rules and regulations do not conflict with the laws of the state of Washington or of the United States. [L. '99, p. 73, § 13.]

§ 8635. [7371.] Road Building to Apply on Assessment Work, When.

Any mining district shall have the power to make road building to mining claims within such district applicable as assessment work, or improvement upon such claims: Provided, that rules pertaining to such road building shall be made only at a public meeting of the miners of such district regularly called by the mining recorder of such district: Provided further, that such meeting shall be attended by at least twelve (12) property holders of such district, and that no such rule can be made without the assent of the majority of the property holders of such district, who are present at such meeting. Such meeting to designate where, when and how such road work shall be done, and shall designate some one of their number who shall superintend such road building or construction, and who shall receipt for such labor to the performer thereof, such receipts to be filed with the county auditor of the county in which such work is performed by the holder or holders of such receipts, and shall be received as prima facie evidence of labor performed as annual assessment work upon such claim or claims as may be designated by an affidavit or oath of labor as provided for in section 8627: Provided, that nothing in this act can be construed as being mandatory upon any owner or holder of mining property to perform labor upon any such road. [L. '99, p. 73, § 14.]

"Act," in this section, refers to §§ 8622—8635.

CHAPTER III.**COAL MINING CODE.****ARTICLE I. DEFINITIONS OF TERMS.****§ 8636. Definitions.**

That for the purpose of this act the terms and definitions contained therein shall be as follows:

Mine: The term "mine" shall mean all the excavations penetrating coal or other strata used in the opening, developing or operation of workings for the purpose of mining coal, operated by one operator, and all machinery, tramways, sidings, either above or below ground, in or adjacent to and belonging to said operations.

Shaft: The term "shaft" shall mean any vertical excavation in the earth or strata used as a means of ingress or egress, for hoisting or lowering material, for ventilation or drainage, or any other purpose incidental to the operation of a mine.

Slope: The term "slope" shall mean any excavation in the earth or strata driven at an angle to the plane of the horizon, used as a means of ingress or egress, for hoisting or lowering of material, for ventilation or drainage, or other purpose incidental to the operation of a mine.

Airway: The term "airway" shall mean any underground passage the principal purpose of which is to carry air.

Working Face: The term "working face" shall mean any portion of a mine from which coal or rock is being cut, removed, sheared, broken or loosened.

Opening: The term "opening" includes shafts, slopes, inclines, tunnels, levels, or any other means of access to a mine.

Map: The term "map" includes plans and projections, section tracing and print of an original plan, or section of a mine or portion thereof.

Plane: The term "plane" shall mean an incline roadway, other than slopes, used for the transportation of coal, men or material.

Tunnel: The term "tunnel" shall mean any excavation in the earth or strata driven approximately horizontally, used in ingress and egress or men and material, or for ventilation, drainage or haulage.

Level—Gangway—Entry: The term "level," "gangway," or "entry" shall mean an excavation driven parallel, or nearly so, to the strike of the seam, and used for ventilation, traveling, haulage or drainage.

Sump: The term "sump" shall mean a catch-basin into which the drainage from a mine flows, and from which it is pumped directly or indirectly to the surface.

Crosscut—Breakthrough: The term "crosscut" or "breakthrough" shall mean an excavation driven to connect two parallel working places.

Inspector: The term "inspector" shall mean the person commissioned by the governor to inspect the coal mines, as hereinafter provided for in this act.

Deputy Inspector: The term "deputy inspector" shall mean a person appointed by the inspector, to be deputy inspector, as hereinafter provided for in this act.

Operator: The term "operator" shall mean any firm, company, corporation, or individual working any mine or any part thereof.

Manager or General Manager: The term "manager" or "general manager" shall mean any person who shall have, on behalf of the operator, general supervision of the operation of any mine or group of mines.

Superintendent: The term "superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision, under the manager or operator, of any mine or group of mines.

Mine Foreman: The term "mine foreman" shall mean a person whom the operator, manager or superintendent, shall place in charge of the workings of the mine, and of the persons employed in or about the same.

Assistant Mine Foreman: The term "assistant mine foreman" shall mean a person appointed by the management to assist in directing the operations of a mine or the persons employed in or about the same.

Fire Boss: The term "fire boss" shall mean a person appointed by the management to inspect all the working places of a mine in his district.

Shot-firer—Shot-lighter: The term "shot-firer" or "shot-lighter" shall mean a person appointed by the mine foreman to inspect and fire shots used for the breaking of coal or rock, and to otherwise supervise the use of explosives in a mine.

Miner: The term "miner" shall mean a person employed underground to mine, cut, shear, break or loosen coal or rock, either by hand, machinery or powder, load same when required, and do necessary timbering.

Company Man: The term "company man" shall include any man or men employed in or about a mine and not mentioned in the foregoing definitions of terms.

Certificated Man: The term "certificated man" shall mean any person holding a certificate of competency as provided for in this act.

Approved Safety Lamps: The term "approved safety lamps" shall mean any safety or electric lamp approved by the federal bureau of mines.

Permissible Explosives: The term "permissible explosives" shall mean any explosive declared by the federal bureau of mines to be permissible for use in a mine, when said explosive is used as provided for by the federal bureau of mines.

Check Weighman: The term "check weighman" shall mean an employee selected and paid by the miners, to inspect the weighing of the miners' coal that is being mined by the ton.

Weighman: The term "weighman" shall mean a person employed by the operator to weigh the coal.

Terms not previously defined: All terms used in this act not hereinabove defined shall have their commonly accepted meaning as used in coal mines of this state. [L. '17, p. 109, § 1.]

Cited in 111 Wash. 254, 255.

ARTICLE II. INSPECTION DEPARTMENT.

§ 8637. Department Created.

The state mine inspection department shall consist of a mine inspector and deputy mine inspector, who shall be appointed as provided for in this act. [L. '17, p. 112, § 2.]

See *infra*, § 10838, duties of mine inspectors devolve upon director of labor and industries.

See *infra*, § 10893, state mine inspector and deputies abolished.

§ 8638. State Board of Examiners.

When this act goes into effect the governor shall appoint a state board of examiners to pass upon the qualifications of applicants for the positions of mine inspector and of deputy mine inspector. This board shall consist of one practical coal miner, one mine manager or superintendent, and one practical mining engineer. All members of the aforesaid

board shall be citizens of the United States and of the state of Washington, and shall have had at least three years' practical experience in or about the mines of this state.

The appointments of the first state board of examiners under this act shall expire April 1, 1921, and a new board shall be appointed by the governor on that date, and every four years thereafter. Nothing in this act shall be construed to prevent the reappointment of any member of the board for any number of consecutive terms. After the expiration of the term of the first board, each board shall be appointed for four years, but any member may be removed by the governor at any time for cause. Each vacancy on the board shall be filled by the governor within two months after the occurrence of such vacancy.

The state board of examiners provided for in this act shall take the following oath of office before some person duly authorized to administer an oath: "We do solemnly swear (or affirm) that we are citizens of the United States and of the state of Washington and that we will perform the duties devolving on us to the best of our ability, and that in giving or refusing certificates of competency as mine inspector of the state of Washington, we will be governed entirely by the evidence of fitness of the applicant, as defined in the state mining laws; that we will certify all whom we may find qualified, and who shall have passed the required examination, according to the law, to the best of our knowledge and judgment."

The state board of examiners shall receive six dollars (\$6) per diem, and their actual and necessary traveling expenses for the time actually engaged in the performance of the duties imposed upon them in this act, such compensation and expenses are to be paid out of the general fund of the state in the manner provided by law. The expenses for stenographic work and printing of the board shall be paid in like manner.

The mine inspector shall furnish, from his office maintenance fund, whatever blanks, blank books, stationery and similar supplies as are needed by the board. [L. '17, p. 112, § 3.]

See *infra*, § 10854, duties of board of mine examiners devolve upon director of licenses.

See *infra*, § 10893, board of mine examiners abolished.

§ 8639. Examinations for Inspectors.

It shall be the duty of the state board of examiners to examine into the qualifications of all applicants for appointment to the position of inspector of mines of the state of Washington, by conducting a thorough examination as to the knowledge of laws applying to mines in the state of Washington, on mine working, ventilation, gases, machinery, first aid and mine rescue work and actual experience in underground mining and to acquaint themselves with the person, character, habits and general worthiness of each applicant. The general examination shall be in writing, and the manuscript and other papers of all applicants, together with the tally sheets and the solution of each question as given by the examining board, shall be filed with the secretary of state as public documents, but such applicants shall undergo an oral examination pertaining to explosive gases, safety lamps, mine fires, mine rescue appliances, and gen-

eral mining subjects, including the laws of the state applying to coal mines. The board of examiners shall confine the examination of applicants to questions as designated in this act. All candidates shall be allowed the use of such text books as the board may deem proper during the examination. No person shall be certified as competent whose average per cent shall be less than seventy-five (75), and certificates shall show what per cent the applicant has obtained, and such certificate shall be valid only when signed by a majority number of the examining board. The examining board shall, immediately after the examination, furnish to each person who came before it to be examined, a copy of all questions, whether oral or written, which were given at the examination, each question to be marked: "Solved right"; "Imperfect"; or "Wrong," as the case may be.

Each candidate shall receive a certificate of competency if he makes an average of seventy-five (75) per cent on the examination credits to be given as follows:

Practical experience, worthiness and general fitness ..	40 points
Written examination	40 points
Oral examination	20 points

The board shall file with the governor and with the mine inspector names of all persons given certificates of competency as mine inspectors: Provided, that anyone who has satisfactorily served as state coal mine inspector in the state of Washington, for one full term of four years, upon making written application to the board setting forth these facts, shall be certified to the governor as properly qualified for appointment. [L. '17, p. 113, § 4.]

See notes to §§ 8637, 8638.

Validity of statutes regulating weighing of coal mined by weight. 11 *Ann. Cas.* 74.

§ 8640. Affidavits of Applicants for Examination.

Applications to the state board for examination for mine inspector and deputy mine inspector shall be made in writing, accompanied by an affidavit showing that the applicant is a citizen of the United States and of the state of Washington, and that he has attained the age of thirty (30) years; has had at least five (5) years' practical experience in and about the mines in the United States, and at least three (3) years' practical experience in and about the mines in the state of Washington, and that he has a certificate of competency in mine rescue and first aid work from the United States bureau of mines. He shall also furnish an affidavit from two citizens of the state that he is a man of good repute, temperate habits, and in good physical condition, and above thirty (30) years of age. [L. '17, p. 115, § 5.]

See notes to §§ 8637, 8638.

§ 8641. Examinations—Appointment of Inspector and Deputy.

Beginning the first Monday of July, 1917, and every four years thereafter, or at such other times as requested to do so by the governor, or by the mine inspector, the state board of examiners shall conduct examinations at the office of the mine inspector. Each examination shall be

thoroughly advertised by sending notices to the management of each coal mine, to be posted at the mine at least thirty (30) days before such examination.

The governor shall appoint as mine inspector a man who has been given a certificate of competency by the board of examiners, or who has otherwise qualified for the position, under the provisions of this act. The mine inspector shall hold his office for four (4) years, and be at all times subject to removal from office by the governor for neglect of duty or for malfeasance in the discharge of his duties.

The mine inspector shall appoint as deputy mine inspector a man who is a citizen of the United States and of the state of Washington, who has had five (5) years' practical experience in and about the mines of the United States and three (3) years' practical experience in and about the mines in the state of Washington, and that he has a mine inspector's certificate of competency given by the board of examiners after an examination as provided for in this act. The deputy mine inspector shall hold office subject to removal by the mine inspector for cause.

The persons who, at the time this act goes into effect, are acting as inspector, or deputy inspector, of mines under the acts hereby repealed, shall continue to act in the same manner as if they had been appointed under this act and until the term for which they were appointed has expired.

Nothing in this act shall be construed as preventing the reappointment of any mine inspector or of any deputy mine inspector who has qualified for these positions under the provisions of this act. [L. '17, p. 115, § 6.]

See notes to §§ 8637, 8638.

§ 8642. Salaries and Expenses of Inspectors—Duties of Inspectors.

The salary of a mine inspector shall be three thousand dollars (\$3,000) per annum, and the salary of the deputy mine inspector shall be three thousand dollars (\$3,000) per annum. The inspector and his deputy shall be allowed their necessary expenses for office maintenance, stenographic services, and for equipment and instruments, as well as for actual and necessary traveling expenses while in the performance of their duties, under the provisions of this act. The auditor of this state is hereby authorized and directed to draw his warrant on the state treasurer in favor of the mine inspector and his deputy for the amounts due them for their salaries monthly, and also for their expenses, upon proper vouchers, to be paid out of any moneys in the state treasury appropriated for that purpose.

The mine inspector and his deputy shall devote their entire time to the duties of their respective offices; they shall have no financial interest, direct or indirect, in any mine under the supervision of the inspection department.

The mine inspector and his deputy shall, before entering upon the discharge of their duties, each take an oath to discharge their duties impartially and with fidelity and to the best of their knowledge and ability.

It shall be the duty of the mine inspector and his deputy to enforce the provisions of this act, for the regulation of mines, unless enforcement is otherwise especially provided for. [L. '19, p. 703, § 1; L. '17, p. 116, § 7.]

See notes to § 8637.

Cited in 111 Wash. 255.

§ 8643. Right of Entry for Inspection.

The mine inspector and his deputy shall have the right, and it is hereby made their duty to enter, inspect and examine any coal mine in this state, and the workings and the machinery belonging thereto, at all reasonable times, either day or night, but not so as to impede or obstruct the working of the mine. They shall also have the right, and it is their duty to make inquiry into the condition of such mine, workings, machinery, ventilation, drainage, method of lighting or using lights and into all methods and things connected with and relating to the health and safety of persons employed in or about said mine, and especially to make inquiry whether or not the provisions of the act regulating mines have been complied with. The management of each mine is hereby required to furnish the means necessary for such entry, inspection, examination and exit. [L. '17, p. 117, § 8.]

See notes to § 8637.

Cited in 111 Wash. 256.

§ 8644. Frequency of Inspection—Records of Inspection—Court Orders and Injunction.

(a) It shall be the duty of the said inspector or his deputy to carefully examine each coal mine in operation in this state at least every four (4) months, and as much oftener as is necessary, to see that every precaution is taken to insure the safety of all workmen who may be engaged in the mine. These inspections shall include at least two visits of the inspection force to every working place in every mine in the state during each calendar year. The mine inspector or his deputy shall make a record of each visit, noting the time and the material circumstances of the inspection, and shall keep each record on file in the office of the inspection department; and also post at the mine a notice of his inspection.

(b) If the management of any operating company shall refuse to permit the members of the inspection department to enter any mine, the inspector or his deputy shall file an affidavit setting forth such refusal, with the judge of the superior court of the county in which the mine is situated, and obtain an order from such judge commanding the management of the operating company to permit such examination and inspection, and to furnish the necessary facilities for the same, or in default thereof to be adjudged in contempt of court and punished accordingly.

(c) If the mine inspector or his deputy shall, after examination of any mine, or the works and machinery connected therewith, find the same to be worked contrary to the provisions of this act, or unsafe for the workmen employed therein, said inspector shall notify the management, stating what changes are necessary. If the trouble is not corrected within reasonable time, the inspector shall, through the prosecuting attorney

of the county in which the mine is located, in the name of the state immediately apply to the superior court of the county in which the mine is located, or to a judge of said court in chambers, for a writ of injunction to enjoin the operation of all work in and about the said mine. Whereupon said court or judge shall at once proceed to hear and determine the case, and if the cause appears to be sufficient, after hearing the parties and their evidence, as in like cases, shall issue its writ to restrain the workings of said mine until all cause of danger is removed; and the cost of such proceeding shall be borne by the operating company of the mine: Provided, that if the said court shall find the cause not sufficient, then the case shall be dismissed, and the costs will be borne by the county in which the mine is located: Provided, also, that should any inspector find during the inspection of a mine, or portion of a mine, such dangerous condition existing therein that in his opinion any delay in removing the workmen from such dangerous places might cause loss of life or serious personal injury to the employee, said inspector shall have the right to temporarily withdraw all persons from such dangerous places until the foregoing provisions of this section can be carried into effect.

(d) Whenever he is notified of any loss of life in or about the mine, or whenever an explosion or other serious accident occurs, the inspector shall immediately go or send his deputy to the scene of the accident to investigate and to render every possible assistance.

(e) The mine inspector or his deputy shall make a record of the circumstances attending each accident investigated, which record shall be preserved in the files of the inspection department. To enable the mine inspector or his deputy to make such investigation and record, they shall have the power to compel the attendance of witnesses and to administer oaths or affirmations to them. The costs of such investigations shall be paid by the county in which such accident has occurred, in the same manner as the costs of the coroner's inquests or investigations are paid.

(f) During his absence from the state on official business, or at such times as he may be incapacitated by illness, or by other causes, the mine inspector shall have the authority to designate his deputy to act as mine inspector.

(g) Whenever a properly signed and executed petition is filed in the superior court, stating that the mine inspector, or his deputy, has neglected his duties, or is incompetent, or is guilty of malfeasance in office, it shall be the duty of said court to issue a citation in the name of the state to said inspector to appear (at not less than five days' notice) on a day fixed, before said court, and the court shall then proceed to inquire into and investigate the allegations of the petitioners. Such action shall be prosecuted by the county attorney.

(h) The above-mentioned petition shall be signed by twenty (20) residents of the state, reputable citizens who are employed in or about the mines, or who are engaged in the operations of mines. It shall be accompanied by the affidavits of two or more of the petitioners, and by a bond in the sum of five hundred dollars (\$500), running to the state.

(i) If the court finds that the said mine inspector or his deputy is neglectful of his duties or is incompetent to perform the duties of his office, or that he is guilty of malfeasance in office, the court shall certify

the same to the governor, who shall declare the office of said inspector vacant. This office shall then be filled in compliance with the provisions of this act.

(j) If the charges are not proved the costs of the investigation shall be imposed on the petitioners. If the charges are proved the costs of the investigation shall be paid by the county in which the charges are preferred. [L. '17, p. 117, § 9.]

See notes to § 8637.

§ 8645. Annual Reports.

It shall be the duty of the mine inspector to transmit a synopsis of his annual report to the governor not later than March 1st of each year.

It shall also be the duty of the mine inspector to see that his complete report is placed in the hands of the state printer for publication on or before the first day of April in each annual period; the same to be published under the direction of the mine inspector. At least two thousand (2,000) copies must be printed. [L. '17, p. 120, § 10.]

See notes to § 8637.

Cited in 111 Wash. 256.

§ 8646. Budget of Department Expenses.

For the purpose of carrying this act into effect the mine inspector shall make an estimate of the expenses of the department and submit same to the legislature. It shall be the duty of the legislature to make the necessary appropriation. [L. '17, p. 120, § 11.]

See notes to § 8637.

ARTICLE III. EXAMINING BOARD.

§ 8647. Examination for First and Second Class Certificates.

The state board of examiners, with the addition of the state mine inspector, shall conduct the examination of applicants for first and second class certificates, and issue the same under the provisions of this act. [L. '17, p. 120, § 12.]

See notes to § 8638.

§ 8648. Time for Holding.

Examinations for first and second class certificates shall be held yearly, or oftener, as the mine inspector may direct, but not more than thirty (30) days per year shall be allowed for this work. The examinations shall be held at such places as the mine inspector shall direct. [L. '17, p. 120, § 13.]

§ 8649. Notice of Time and Place—Certificates—Fees.

Notice of the place and date on which examinations for first and second class certificates are to be held shall be sent to each mine in the state, and shall be posted in a conspicuous place, at least fifteen (15) days before the time set for the examination.

Certificates issued to candidates who pass the examinations shall be in such form as shall be prescribed by the examining board. The mine

inspector shall keep a record in his department of all such certificates granted. Each certificate shall contain the full name, age and birth place of the applicant; shall designate whether first class or second class; the average percentage made on the entire examination, and shall be valid only when signed by a majority of the board.

Each application for a first or second class certificate must be accompanied by a fee of two dollars (\$2), made payable to the state treasurer, to be applied to pay the salaries and expenses of the members of the examining board. [L. '17, p. 120, § 14.]

§ 8650. Examination Subjects for First Class.

Examinations for first class certificates shall cover the following subjects: Laws applying to mines in the state of Washington; methods of mine working and ventilation; mine fires; mine rescue work and appliances; first aid to the injured and actual experience in underground mining; methods of timbering, bratticing and blasting. The general examination shall be in writing, and the manuscripts and other papers of all applicants, together with the tally-sheets and the solution of each question as given by the examining board, shall be filed with the mine inspector as public documents. The papers may be destroyed one year from date of examination. In addition to the written examination, the applicants shall undergo an oral examination pertaining to explosive gases, safety lamps, first aid to the injured, mine rescue appliances and general mining subjects. All candidates shall be allowed the use of such text books as the board may deem proper during the examination.

Each candidate shall receive a certificate of competency if he makes an average of seventy-five per cent on the examination, credits to be given as follows:

Practical experience, worthiness and general fitness ..	40 points
Oral examination	40 points
Written examination	20 points

[L. '17, p. 121, § 15.]

§ 8651. Examination Subjects for Second Class.

Examinations for second class certificates shall cover the following subjects: The sections of the law of the state of Washington applying to the duties of men with second class certificates; mine ventilation and similar subjects; questions in regard to mine rescue work and appliances; first aid to the injured; methods of timbering, bratticing and blasting.

The general examination shall be in writing and the manuscripts and other papers of all applicants, together with the tally-sheets and the solution of each question as given by the examining board shall be filed with the mine inspector as public documents. These papers may be destroyed one year from date of examination.

In addition to the written examination the applicant shall undergo an oral examination. The examination shall include the use and care of safety lamps; work in timbering, bratticing, charging and firing blasts; work in first aid to the injured, and, wherever possible, in the use of mine rescue apparatus, and other work which men with second-grade

certificates may be called upon to do in pursuance of their duties. An average percentage of seventy-five (75) on the whole examination shall be required for qualification. Credits to be given as follows:

Practical experience, worthiness and general fitness . . .	50 points
Oral examination	30 points
Written examination	20 points

[L. '17, p. 122, § 16.]

§ 8652. Service Certificates.

Service certificates shall be granted by the examining board without examination, to mine foreman, assistant mine foreman, and fire bosses, who are now acting in these capacities. Proper affidavits must be furnished the examining board by the applicants for service certificates, covering time of service, moral character and general fitness for the position.

All first and second class certificates granted by the examining board without giving an examination in the manner herein provided, shall be designated on the face of the certificate as a service certificate.

A service certificate shall have the same effect for the purpose of this act as a certificate of competency granted by the board after examination. [L. '17, p. 122, § 17.]

See notes to § 8638.

§ 8653. Cancellation of Certificates—Hearings—Eligibility for Examination.

The certificate of any mine foreman, assistant mine foreman, or fire boss, may be canceled or suspended by any examining board upon notice and hearing as hereinafter provided. If it shall be established in the judgment of said board that the holder of said certificate has become unworthy to hold said certificate by reason of violation of the law, or obtained by fraud, or of intemperate habits, or incapacity, said certificate may be canceled or suspended for any period not to exceed two years: Provided, that any person against whom charges or complaints are made hereunder shall have the right to appear before said board and defend himself against such charges, and he shall be given fifteen (15) days' notice in writing of such charges, previous to the hearing. The meeting of the board of examiners to investigate charges against the holder of any certificate of competency of any grade shall be held within a reasonable time after such charges are made. In no case shall the meeting of said board be deferred longer than thirty (30) days after the charges are made. Any holder of a first or second class certificate, who shall have had his certificate canceled, shall be eligible to take an examination for a new certificate on and after two years from date of cancellation, by setting forth in his application the time, place and cause of cancellation of his former certificate. [L. '17, p. 123, § 18.]

§ 8654. Lost Certificates.

In case of the loss or destruction of a certificate, the board may supply a copy thereof to the person losing the same, upon the payment

of the sum of fifty cents (50c): Provided, it shall be shown to the satisfaction of the board that the loss has actually occurred. [L. '17, p. 123, § 19.]

See notes to § 8638.

§ 8655. Forged or False Certificate—Penalty.

Any person or persons who shall forge or counterfeit a certificate, or knowingly make or cause to be made any false statement in any certificate under this act, or any official copy of same, or shall urge others to do so, or shall use any such forged or false certificate, or any official copy of such, or shall make, give, alter or produce, or make use of any false declaration, representation or statement in any certificate or copy thereof, or any document containing the same, shall be guilty of a misdemeanor. [L. '17, p. 124, § 20.]

ARTICLE IV. CERTIFICATED MEN.

§ 8656. Employees to be Certificated.

Men employed in the coal mines of the state of Washington as mine foreman, assistant mine foreman, or fire bosses, shall have certificates of competency as heretofore provided. [L. '17, p. 124, § 21.]

§ 8657. Classes.

Such certificates of competency shall be first class as mine foreman, and second class as assistant mine foreman or fire boss. A first class certificate shall be considered as including the second class certificate also. [L. '17, p. 124, § 22.]

§ 8658. Applications and Fees.

Applications for examination for first and second class certificates must be made in writing to the mine inspector and must be accompanied by an affidavit showing that the applicant is eligible as provided for under section 8659 of article IV (qualifications of candidates for certificates of competency). Each application must be accompanied by a fee of two dollars (\$2). [L. '17, p. 124, § 23.]

§ 8659. Qualifications for Certificates.

In no case shall a certificate of competency be granted to any candidate until he shall have satisfied the board of examiners, which is holding the examination, by qualifying as follows, or by service certificates as hereafter provided for:

(a) If a candidate for a first class certificate, that he has had at least five (5) years' experience in and about the actual workings of a coal mine, and is at least twenty-five (25) years of age.

(b) If a candidate for a second class certificate, that he has had at least one year's experience in the underground workings of a coal mine, and is at least twenty-three (23) years of age.

(c) If a candidate for either first or second class certificate, that he has taken a course in mine rescue and first aid training equivalent to the

work required by the federal bureau of mines for a certificate of competency in these subjects.

Provided, that when satisfactory evidence is submitted to the examining board showing the work the candidate for a first class certificate has completed in any mining course in any university, college, or correspondence school, the board may in lieu of actual experience allow him credit for not more than eighteen (18) months on his practical experience for such work completed. [L. '17, p. 124, § 24.]

§ 8660. Qualifications for Foreman.

No one shall be allowed to act as a mine foreman of a coal mine in this state except he be the holder of a first class or service certificate under this act. [L. '17, p. 125, § 25.]

§ 8661. Qualifications for Assistant Foreman and Fire Boss.

No one shall be allowed to act as assistant mine foreman or fire boss in any coal mine in this state, except that he be the holder of a second class or service certificate under this act. [L. '17, p. 125, § 26.]

ARTICLE V. VENTILATION.

§ 8662. Quantity of Air for Ventilation.

The operator, or superintendent, of every mine shall provide and maintain ample means of ventilation to furnish a constant and adequate supply of pure air for employees in the mine. The minimum quantity of air shall be one hundred (100) cubic feet per minute for each person employed in the mine, and five hundred (500) cubic feet per minute for each horse or mule, and as much more as may be necessary to keep the mine free from dangerous and explosive gases. [L. '17, p. 125, § 27.]

§ 8663. Separate Air Current for Each Split.

Every mine shall be divided into districts or splits of not more than seventy (70) men in each district or split (unless in the judgment of the inspector it is impracticable to comply with this requirement, in which case a larger number, not to exceed ninety (90) persons, may be permitted to work therein). Each district or split shall be supplied with a separate current of fresh air. The return air from each district or split, when from seventy to ninety men are employed, shall be conducted direct or through an overcast or undercast to the main return airway. [L. '17, p. 125, § 28.]

§ 8664. Character of Ventilation.

The ventilation shall be conducted to all working places in the mine in sufficient quantities to dilute, render harmless and carry off the smoke, noxious and other dangerous gases generated therein, to such an extent that all working places, traveling roads, and such other places as may be necessary for the general safety of the mine, shall be in a safe and healthful condition. [L. '17, p. 126, § 29.]

§ 8665. Measurement of Air.

The quantity of air passing a given point shall be ascertained by an anemometer, the measurements to be taken by the mine foreman, or his assistant, at least once each week at or near the main inlet and outlet of the mine, and the inlet and outlet for each district or split, and also in the last crosscut or breakthrough nearest to face of entry, gangway or air course beyond the last breast, chute or room, turned, and in the top crosscut or breakthrough between the two inside working breasts, chutes or rooms, also in the top crosscut or breakthrough between the two outside working breasts, chutes or rooms. [L. '17, p. 126, § 30.]

§ 8666. Time for Taking.

Weekly measurements shall also be taken of air traveling through pillars that are being drawn. Said measurements shall be taken on the days when the men are at work. [L. '17, p. 126, § 31.]

§ 8667. Record of Measurement.

A record of all air measurements shall be entered in a book provided for that purpose and kept at the mine. [L. '17, p. 126, § 32.]

§ 8668. Inspection for Inflammable Gas.

In every mine in which inflammable gas has been found within the preceding twelve (12) months, or spontaneous combustion occurs, a fire boss, or fire bosses, shall be appointed, who shall, within three hours before the time for commencing work in any part of the mine, inspect with an approved safety lamp all working places, and shall make a true report of the condition thereof. [L. '17, p. 126, § 33.]

§ 8669. Fire Boss to Report on Safety of Mine.

Where fire bosses are employed workmen shall not go to work in the mine until the same and the traveling-way leading thereto are reported safe by the fire boss or fire bosses so inspecting. Every such report shall be recorded as provided for under the duties of fire bosses, article IX, section 8750. [L. '17, p. 127, § 34.]

§ 8670. Suspension and Starting of Fan.

At nongaseous mines the fan may be stopped during a suspension of work, temporary or otherwise. However, it must be started two hours before employees are admitted to the mine. [L. '17, p. 127, § 35.]

§ 8671. Operation of Gas Fans.

Every main fan at gaseous mines shall be kept in operation continuously, day and night, unless operations are definitely suspended for a period of one week or more: Provided, that should it at any time become necessary to stop any fan at any mine, gaseous or nongaseous, on account of accident to part of the machinery connected therewith, or by reason of any other unavoidable cause, it shall be the duty of the mine foreman, or the assistant mine foreman, in charge, after having first provided for the safety of the persons employed in the mine, to order said fan stopped for necessary repairs. [L. '19, p. 704, § 2. Cf. L. '17, p. 127, § 36.]

§ 8672. Recording Instrument for Air Pressure—Location of Fans.

Every main ventilating fan shall be provided with a recording instrument by which the ventilating pressure of the fan shall be registered, and the registration of each day, with the date thereof, shall be kept in the office of the mine for future reference for one year, the same to be produced upon request of the inspector.

No fan, unless driven by electricity or compressed air, shall be placed in any mine. In gaseous mines if the fan be electrically driven, the motor shall be placed in the intake airway. [L. '17, p. 127, § 37.]

§ 8673. Furnaces Prohibited.

It shall be unlawful to use a furnace for ventilation in any coal mine in the state. [L. '17, p. 127, § 38.]

§ 8674. Air Bridges, Under and Overcasts.

In every mine all permanent air bridges, undercasts or overcasts, shall be substantially built of ample strength. If built of wood they must be covered with fireproof material on all exposed sides; or they must be driven through the solid strata. [L. '17, p. 128, § 39.]

§ 8675. Ventilating Doors.

All doors used in assisting or in any way affecting the ventilation shall be so hung that they will close automatically. [L. '17, p. 128, § 40.]

§ 8676. Doors Hung in Pairs—Extra Doors.

All permanent doors on main haulage roads affecting main air currents shall be hung in pairs and so placed that when one door is open, another which has the same effect upon the same air current, shall be and remain closed and thus prevent any temporary stoppage of the air current. An extra door shall be so placed and kept standing open as to be out of reach of accident, and arranged so that it can be closed should one or both of the other doors be out of order. [L. '17, p. 128, § 41.]

§ 8677. Self-acting Doors or Attendants.

The inspector may require either self-acting doors of an approved type, or an attendant at permanent doors that control the air current on any main haulage roads through which cars are hauled, for the purpose of opening and closing it for the employees and cars to pass in and out from the workings. A hole for shelter shall be provided at each door, to protect the attendant from danger from cars while performing his duty. Persons employed for this purpose shall remain at the doors at all times during working hours: Provided, that the same attendant may attend two doors if his absence from the first door does not endanger the safety of the employees. [L. '17, p. 128, § 42.]

§ 8678. Stoppings Between Airways—Construction.

In all mines, all new permanent stoppings in crosscuts or breakthroughs between the main intake and return airways shall be substantially built of masonry, concrete, or blocks of timber. Renewals of old stoppings shall be built as above. When timber is used the same must be faced with concrete or other incombustible material. [L. '17, p. 128, § 43.]

§ 8679. Air-tight Stoppings.

Stoppings on levels between intake and return airways shall be substantially built and made as near air-tight as possible. On levels driven more than two thousand (2,000) feet, stoppings shall be built of masonry, concrete or blocks of timber. [L. '17, p. 128, § 44.]

§ 8680. Wood Stoppings.

Stoppings shall be built in crosscuts or breakthroughs, between breasts, chutes or rooms, or other working places, to conduct the ventilation to the working places. However, such stoppings may be built of wood. [L. '17, p. 129, § 45.]

§ 8681. Outlets and Openings, Number Required—Application of Act.

It shall be unlawful for the owner, operator or superintendent of any mine, or the agent of such owner, operator or superintendent, to employ any person or persons in such mine, or permit any person or persons to be in such mine for the purpose of working therein, unless there are provided and maintained in connection with and leading from such mine, in addition to the hoisting shaft, slope or other place of delivery not less than two openings or outlets to the surface, or one outlet to the surface and one underground passage leading to a contiguous mine; said openings or outlets to be separated from each other and from such hoisting shaft, slope or other place of delivery, by a stratum of not less than fifty (50) feet in thickness, at and through which openings or outlets safe and ready means of ingress and egress are at all times available by not less than three routes, for any person or persons employed in said mine; and in connection with and leading from each seam or stratum of coal being worked in said mine, and from every lift thereof, not less than two openings or outlets leading directly or indirectly to the surface, and separated by a stratum of not less than fifty (50) feet in thickness; at and through which two openings safe and ready means of ingress and egress are at all times available by not less than two routes for any person or persons employed in said stratum or seam of coal or lift thereof. This section shall not apply to a mine while being worked for the purpose of making communication between said outlets, or to open a seam or stratum of coal, or new lift thereof, so long as not more than twenty (20) persons are employed at any time in such part of a mine, or new lift of a mine; neither shall it apply to any mine or part of a mine in which any outlet has been rendered unavailable by reason of the final robbing of pillars, previous to abandonment, so long as not more than twenty (20) persons are employed in such mine or any part of such mine at one time.

This section shall apply only to mines or parts of mines which shall be developed or in which development shall be started after this act shall go into effect, but it shall not be construed to permit any openings or outlets now in use for the safety of men to be abandoned unless other such openings are substituted therefor. [L. '19, p. 704, § 3; L. '17, p. 129, § 46.]

§ 8682. Distances Allowed for Coal Removal.

It shall be unlawful for the owner, operator or superintendent of any mine to loosen or remove, or cause or permit to be loosened or removed from its original position, any coal within a distance of two hundred and fifty (250) feet on either side of any hoisting slope, or within a distance of fifty (50) feet on either side of any permanent airway, or escapeway, or within twenty-five (25) feet of any level or gangway, or any parallel airway to any level or gangway, except for the purpose of driving air and escapeways, crosscuts and such other passages as may be necessary for the proper operation of the mine: Provided, that if the inspector shall deem it safe to permit coal to be loosened or removed within a distance nearer than two hundred and fifty (250) feet from any hoisting slope he may grant permission to the operator to remove such coal within a distance of not less than one hundred and fifty (150) feet of such hoisting slope, by issuing a written permit therefor. This section shall not be construed to prevent the drawing of pillars previous to the final abandonment of the mine. [L. '19, p. 705, § 4; L. '17, p. 130, § 47.]

§ 8683. Crosscuts.

Crosscuts between room, breasts and chutes shall be made not to exceed sixty (60) feet apart.

Crosscuts between gangways, levels, airways and counters, or main slopes and main air courses, shall not exceed sixty (60) feet, unless they may be properly ventilated by sufficient brattices. [L. '17, p. 130, § 48.]

§ 8684. Conducting Air to Crosscuts.

The required air current shall be conducted to the crosscut nearest the face of each entry, gangway, breast or chute. [L. '17, p. 130, § 49.]

§ 8685. Danger Signs.

Danger signs in all mines shall be uniform, and of a design submitted by the mine inspector. All danger signs shall be kept in good condition, and no defective sign shall be allowed to remain in any mine. [L. '17, p. 130, § 50.]

ARTICLE VI. MAPS AND PLANS.**§ 8686. Survey and Map of Mine.**

The operator of every coal mine in this state shall make, or cause to be made, an accurate transit survey and an accurate map or plan of such mine, drawn to the scale of one hundred (100) feet to the inch, on which shall appear the name of the state, county and township in which the mine is located; the designation of the mine, the name of the company or owner; the certificate of the mining engineer or surveyor as to the accuracy and date of the survey; the direction of the true meridian, and the scale to which the drawing is made. [L. '17, p. 131, § 51.]

§ 8687. Map to Show Surface Objects.

Every such map or plan shall correctly show the surface boundary lines of the coal rights pertaining to each mine, and all section or quarter-

section lines or corners within the same; the lines of town lots and streets, the tracks and sidetracks of all railroads and the location of all wagon roads, rivers, streams, lakes or ponds, with depth shown, all buildings, landmarks and principal objects on the surface. [L. '17, p. 131, § 52.]

§ 8688. Underground Workings Shown—Datum and Pitch of Seams.

For the underground workings said maps shall show all shafts, slopes, tunnels or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms and crosscuts; the location of pumps, hauling engines, engine planes, abandoned works, firewalls and standing water; and the boundary line of any surface outcrop of the seam. Sea level datum and pitch of seams shall be placed on the maps at top and bottom of slopes and shafts, at ends of all gangways and at top of escapeways. [L. '17, p. 131, § 53.]

§ 8689. Separate Map for Each Seam.

A separate map, drawn to the same scale in all cases, shall be made of each and every seam worked in any mine, and the maps of all such seams shall show all shafts, inclined planes or other passageways connecting the same, and shall show the sea level datum and pitch of seams, as provided in section 8688, article VI. [L. '17, p. 131, § 54.]

§ 8690. Separate Surface Map.

A separate map shall also be made of the surface whenever the surface buildings, lines or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such cases the surface map shall be drawn upon transparent cloth or paper, so that it can be laid on the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine. [L. '17, p. 132, § 55.]

§ 8691. Copies of Maps Filed With Inspector.

The original or true copies of all such maps shall be kept in the office of the mine, and prints thereof shall also be furnished to the mine inspector. The maps so delivered to the inspector shall be the property of the state, and shall remain in the custody of the inspector during the term of his office, and be delivered by him to his successor in office; they shall be kept at the office of the inspector, and be open only to the inspector or his deputy for his examination and he shall not permit any copies of the same to be made. [L. '17, p. 132, § 56.]

§ 8692. Mappings of Changes in Plans or New Work.

An extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1st of every year, and the results of said survey, with the date thereof, shall be promptly and accurately entered upon the original maps and all copies of same so as to show all changes in plan or new work in the mine and all extensions to the old workings which have been made since the last preceding survey. The said changes and extensions shall be entered upon

the copies of the maps in the hands of said inspector, or a new copy furnished and the old copy returned to the operator. [L. '17, p. 132, § 57.]

§ 8693. Final Survey and Map of Abandoned Mine.

When any coal mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a final survey of all parts of such mine, and the results of the same shall be duly extended on all maps of the mine and a copy of such final survey shall be filed with the mine inspector, so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines of the surface. [L. '17, p. 132, § 58.]

§ 8694. Neglect to Furnish Map to Inspector—Penalty.

Whenever an operator of any mine shall neglect or refuse or for any cause not satisfactory to the mine inspector, fail for the period of three months to furnish said inspector the map or plan of such mine, or a copy thereof, or the extensions thereto, as provided in this article, such operator shall be deemed guilty of a misdemeanor, and the inspector is hereby authorized to make or cause to be made an accurate plan or map of such mine at the cost of the operator thereof, and the cost of the same may be recovered from the operator in an action at law brought in the name of the inspector, for his use. [L. '17, p. 133, § 59.]

See notes to § 8637.

§ 8695. Inspector may Order Survey—New Map by Inspector.

The mine inspector may order a survey to be made of the workings of any mine, in addition to the regular annual survey, the results to be extended on the maps of the same and copies thereof, whenever the safety of the workmen, unlawful injury to the surface, unlawful encroachment on adjoining property, or the safety of an adjoining mine requires it.

If the inspector shall believe any map required by this act is materially inaccurate or imperfect, he is authorized to make or cause to be made a correct survey and map at the expense of the operating company, the cost recoverable as for debt: Provided, if such test survey shows the operator's map to be practically correct, the state shall be liable for the expense incurred, payable in such manner as other state accounts incurred by the mine inspector. [L. '17, p. 133, § 60.]

ARTICLE VII. HOISTS AND HOISTING.

§ 8696. Signaling Apparatus.

The owner, operator or agent of every coal mine operated by shaft or slope, shall provide efficient means of signaling between the top and bottom thereof and each intermediate working level, by an electric bell or other equally satisfactory signaling device, and also a uniform code of signals for use therewith.

The operator or the superintendent shall provide, and hereafter maintain in good condition from the top to the bottom of every shaft or slope, and at each alternate intermediate working level from or to which

persons or materials are lowered or hoisted, a telephone or metal tube of proper diameter, suitably adjusted to the free passage of sound, through which conversation may be held and understood between persons at the top and bottom of said shaft or slope. [L. '17, p. 133, § 61.]

§ 8697. Hoisting Apparatus—Indicators—Overwinding—Cage Construction and Safety Devices.

For the purpose of hoisting or lowering men in any shaft or slope the owner, operator or agent thereof shall provide:

(a) A type of hoisting apparatus of sufficient strength to hold twice the maximum weight of the cage or cars loaded with men at any point on the shaft or slope. Each hoisting apparatus to be equipped with a brake or brakes on each drum of sufficient power to fully control the speed of the cage or cages or cars in such shaft or slope.

(b) An efficient indicator that will show at all times the true position of the cage or cages or cars attached to each hoist.

(c) An efficient device for the prevention of overwinding shall be attached to every hoisting apparatus hereafter put in service for hoisting or lowering persons in a shaft.

(d) A cage with a floor free from all obstructions must be provided for all shafts. Such cage shall be solidly constructed of heavy timber or iron beams for the frame, sufficient to withstand severe shocks under strains, and shall be covered with a substantially supported bonnet of boiler iron to protect persons riding in the cage from anything falling down the shaft. Each cage must be equipped with chains, bars or gates at each end, which must be always in place when men are hoisted or lowered. Each cage must also be equipped with efficient safety catches to prevent the cage from falling down the shaft in the event of the rope breaking. All rope links or chains attached to cars or cages must be of ample strength with a factor of safety of not less than five to one on the maximum load.

(e) On all regular man trips being hoisted on slopes of twenty (20) degrees or more, each car shall be attached to the car ahead by two or more separate connections, each one of which must be of ample strength to hold any load placed upon it by the breaking of the other. And the first car shall be secured to the socket by an extra cable or chain securely attached to the car: Provided, that any other approved safety device may be used in lieu of those hereinabove in this paragraph (e) mentioned. On all slopes of less than twenty (20) degrees a safety rope shall extend from the main rope to the last car, or other approved safety device that will answer the same purpose.

(f) At all shafts, when hoisting men or material, there must be provided a competent person at the top and bottom to have control of the admission of cars, material or persons, to the cage operating in such shaft.

(g) Safety gates must be provided at the top and at any intermediate landing of a shaft, or of a slope inclined over sixty (60) degrees from the horizontal, such gates to be so constructed that when closed access to the shaft or slope will be entirely cut off; and such gates to be kept closed

at all times when the rope rider or other person in charge of such landing is not present.

(h) At distances not to exceed sixty (60) feet on inclined planes or slopes where men are employed during operations suitable holes for refuge must be provided, these to be cut into the strata not less than two and one-half ($2\frac{1}{2}$) feet deep and four (4) feet wide and five (5) feet high and level with the road. Such holes to be located at points easy of access and to be kept whitewashed. [L. '17, p. 134, § 62.]

§ 8698. Strength and Inspection of Safety Devices.

All ropes, chains, safety catches, etc., as enumerated above, must be of ample strength to support a strain equivalent to five times the maximum load, and must be kept in safe condition; and, furthermore, they must be inspected at least once in twenty-four (24) hours by a competent person appointed by the superintendent for that purpose, and a record of such examinations, reporting all defects that may have been found, must be written in ink in a book kept for that purpose at the mine office. Any defects must be corrected immediately and no persons shall be lowered into or hoisted from the mine by defective apparatus; and, furthermore, all coupling links, pins and chains used on main haulage in hoisting or lowering men on a slope shall be annealed once in every three months. Pins and couplings on all other cars must be annealed once a year. [L. '17, p. 135, § 63.]

§ 8699. Testing Safety Catches.

The following tests of safety catches on cages shall be made once every six months: The cage shall be secured by passing a heavy hemp rope through the bridle-chain ring or link and fastening both ends of the ropes to guides or to diagonally opposite posts of head frame, drawing the rope taut. A blocking to be passed below the cage to support same before hoisting rope is taut. The hoisting engineer shall then slack away until the cage is suspended on the hemp rope with at least four feet of the slack hoisting rope on top of it. Everything being in readiness the hemp rope shall be suddenly cut. If the safety catches stop the cage before it rests upon the blocking, the apparatus shall be considered efficient. [L. '17, p. 136, § 64.]

§ 8700. Proximity of Buildings to Ventilating Fans or Main Airway.

No building or structure shall be erected within seventy-five (75) feet of any main ventilating fan or main entrance to or exit from main airway slope or drift, except the tipple building and trestle thereto, unless same shall be built of fireproof material, and no fires shall be allowed in or about said tipple or trestle, except it be in a fire-box of a boiler; Provided, that this section shall not apply to any shaft or slope heretofore sunk, or to any building heretofore erected, or to prospecting or development work otherwise regulated by this act. [L. '17, p. 136, § 65.]

§ 8701. Men and Materials not to be Hoisted Together.

No person, except mine officials, cagers or repair men, shall be hoisted or lowered in a cage with a loaded or empty car or with material of any kind on either the same or opposite cage. [L. '17, p. 136, § 66.]

§ 8702. Number Limit of Men Hoisted.

Not more than six (6) persons per ton of hoisting capacity shall be hoisted or lowered in any cage or car in any shaft, slope or incline at any one time: And, provided, that not more than one person for each three (3) square feet of floor surface shall be hoisted or lowered in any cage at any one time. [L. '17, p. 137, § 67.]

§ 8703. Speed Limit.

No person or persons other than trip riders or mine officials shall be hoisted or lowered at a speed exceeding six hundred (600) feet per minute. [L. '17, p. 137, § 68.]

§ 8704. Competency of Hoisting Engineer.

An engineer placed in charge of the hoisting engine, where men are being hoisted or lowered, must be a sober, competent person not less than twenty-one (21) years of age. [L. '17, p. 137, § 69.]

§ 8705. Riding Loaded Cars—Traveling Ways for Men.

No person, except those whose regular duties require it, shall be allowed to ride in or on the outside of any loaded car or skip in any slope. In any mine opened after this act goes into effect, separate traveling ways shall be provided and no employee, except those whose regular duty compels them to use a slope or incline, will be allowed to walk up or down the same while they are in operation. [L. '17, p. 137, § 70.]

ARTICLE VIII. DUTIES OF OPERATORS.**§ 8706. Liability of Agents of Owner or Operator.**

For the purpose of this act the superintendent or mine foreman in direct charge of the operation of any mine or mines, shall be considered as the agent of the owner or operator, and shall be held jointly responsible with the owner or operator for any failure to comply with the sections of this act governing owners, operators or agents. [L. '17, p. 137, § 71.]

§ 8707. Record of Deaths and Injuries.

Every operator of a coal mine shall make, or cause to be made, for the information of the inspection department, upon uniform blanks furnished by said department, a record of all deaths and all injuries sustained by any employees in the pursuance of their regular occupations. These records shall be forwarded to the inspection department within one month from the time the accident occurs. [L. '17, p. 137, § 72.]

§ 8708. Matters of Which Inspector must be Notified.

In addition to the foregoing, immediate notice must be conveyed to the state inspection department by the management of the operating company interested: (1) Whenever a new mine is opened; (2) Whenever it is intended to abandon any mine or to reopen an abandoned mine; (3) When the workings of any mine are approaching any abandoned mine believed to contain any accumulation of water or gas; (4) Upon the accidental closing or abandonment of any regularly established passageway to an

escapement outlet; (5) Upon the occurrence of any serious fire within the same; (6) When any unusual amount of or accumulation of gas is encountered; (7) Whenever any person is seriously burned by the ignition of explosive gas. [L. '17, p. 138, § 73.]

§ 8709. Superintendent as Mine Foreman.

It shall be unlawful for the operator to have the superintendent to act as mine foreman, unless the superintendent holds a certificate of competency as a mine foreman issued by the state board of examiners. [L. '17, p. 138, § 74.]

§ 8710. Temporary Mine Foreman.

It shall be unlawful for the operator of any mine to have in his service as mine foreman any person who does not hold a certificate of competency as mine foreman issued by the state board of examiners. Anyone holding a first-class certificate may serve as a mine foreman: Provided, that whenever an exigency arises by which it is impossible for any operator to secure the immediate services of a certificated mine foreman, he may employ any trustworthy and experienced man to act as temporary mine foreman for a period not to exceed thirty (30) days, and in the event that no person possessing [possessing] a certificate of competency satisfactory to the mine superintendent can be found to fill the position, then the mine inspector may grant a temporary certificate to some person he may deem qualified, who may then fill the position until thirty (30) days from and after the next meeting of the board of examiners held for the purpose of granting certificates. [L. '17, p. 138, § 75.]

§ 8711. Temporary Assistant Foreman.

It shall be unlawful for the operator of any mine to have in his employ as assistant mine foreman or fire boss any person who does not hold a first or second class certificate of competency issued by the board of examiners: But, provided, that whenever any exigency arises by which it is impossible for any operator to secure the immediate services of a certificated man, he may employ any trustworthy and experienced man for a period not exceeding thirty (30) days, and in the event that no person possessing a certificate of competency satisfactory to the mine superintendent can be found to fill the position, then the mine inspector may grant a temporary certificate to some person he may deem qualified, who may then fill the position until thirty (30) days from and after the next meeting of the board of examiners held for the purpose of granting certificates. [L. '17, p. 139, § 76.]

§ 8712. Certificated Foreman for Underground Operations.

Underground operations shall be under the charge of a person holding a first-class certificate under this act: Provided, however, that this section shall not apply to prospecting or exploring work where less than ten (10) men are employed underground at any one time, unless the mine inspector, by written notice served on the management of such mine, requires such mine to be under the control of a certificated mine foreman. [L. '17, p. 139, § 77.]

§ 8713. Change of Name of Mine.

The operator or superintendent of every mine shall, within thirty (30) days, send notice to the mine inspector when any change occurs in the name of a mine, under the provisions of this act. [L. '17, p. 139, § 78.]

§ 8714. Operating Without Foreman—Penalty.

If any mine is worked for more than thirty (30) days without a foreman as required by this act, the operator of such mine shall be guilty of a misdemeanor and liable to a penalty not exceeding fifty dollars (\$50) for every day during which such mine is worked: Provided, however, that one foreman may act as foreman at more than one mine operated by the same company in the same camp. [L. '17, p. 139, § 79.]

§ 8715. Steam Boiler Inspections.

All boilers used for generating steam in and about coal mines must be inspected by a qualified person once in every six months, or oftener if required by the mine inspector. The result of such inspection shall be certified in writing to the mine inspector within thirty (30) days thereafter, on blank furnished by the mine inspection department.

Failure to make such reports shall constitute a misdemeanor. [L. '17, p. 140, § 80.]

§ 8716. Boiler Safety Devices.

Every boiler must be equipped with water-glasses, trycocks, steam gauge, safety valves and such other safety devices as may be required by law. All such devices must be kept in proper adjustment and their condition inspected and reported on in the same manner as provided for the boiler inspection. [L. '17, p. 140, § 81.]

§ 8717. Permit for Locating Boilers Near Shaft.

In the case of mines being developed where ten men or less are employed on one shift, the mine inspector shall, upon request of the operator, issue a written permit authorizing the placing temporarily of a boiler or boilers nearer than seventy-five (75) feet to a shaft, slope or other opening. [L. '17, p. 140, § 82.]

§ 8718. Duty to Test Boiler Safety Devices.

The engineer or fireman in charge of a boiler or boilers shall keep a constant watch over all safety devices and shall try same frequently to determine their proper adjustment. He shall immediately notify his employer of any defect. [L. '17, p. 140, § 83.]

§ 8719. Wash-house—Fees for Installation.

Whenever sixty per cent of the employees of a coal mine in this state shall petition the operator of such mine to provide a suitable wash-house for their use, and shall enter into an agreement with such operator to pay for the interest on the cost, for the depreciation, maintenance and operation of such building a reasonable fee of not to exceed one dollar (\$1) per month per employee, for the use thereof, such operator shall provide a

suitable building which shall be convenient to the principal entrance to the mine or group of mines to be used as a wash-house, changing and drying-room for the employees of the mine. Such building or wash-house to have sufficient floor space for the accommodation of miners and others using the same. The flooring in such wash-house to be of concrete tiling or cement, and the flooring in changing-room to be optional with the owner as to the material used. Lockers or some other arrangement shall be put in the changing-room for the use of employees using same, and shower-baths shall be provided in the wash-room, one for each twenty (20) men employed on one shift. The operator shall furnish an attendant to look after the operation, ventilation, drying of clothes, and sanitary conditions of the wash-house and changing-rooms, the reasonable cost of which shall be paid by the employees as a part of the maintenance and operation of the building.

This section shall not apply to mines where less than twenty (20) men are employed, or to mines under development which are not on a permanent operating basis. [L. '17, p. 140, § 84.]

§ 8720. Fire Protection—Automatic Sprinklers.

At each and every coal mine in this state the owner or operator thereof shall, within three (3) months after this act goes into effect, provide and maintain in good condition efficient means of protection against fire at the following places, to wit: Main entrance to hoisting shafts, slopes, permanent escapeways and ventilating fans on surface; also at all underground stables, pump-rooms, hoists of more than fifty (50) horsepower, and ventilating fans delivering more than ten thousand (10,000) cubic feet of air per minute. Said means of fire protection shall consist of sufficient chemical extinguishers of approved type, or of proper hydrants, hose not less than one and one-half ($1\frac{1}{2}$) inch internal diameter, with suitable connections and nozzles, and pipe-lines of not less than two (2) inches internal diameter, to convey water at a pressure of not less than twenty-five (25) pounds per square inch from an adequate supply of each of the aforementioned places.

At mines where open flame lamps are used at all main landings for a distance of two hundred (200) feet from the shaft or slope in all stables, pump-rooms, or hoist-rooms, that are timbered, or where timber is used in such quantities that a fire would be likely to spread, there shall be maintained two lines of automatic sprinklers on each side of the passageway attached to not less than one and one-half ($1\frac{1}{2}$) inch pipes connected with the fire-fighting water supply, and such sprinklers shall not be more than ten (10) feet apart.

All automatic sprinklers shall be of the fusible plug type and shall not require a temperature of more than one hundred and sixty-five (165) degrees Fahrenheit to release the water. [L. '17, p. 141, § 85.]

§ 8721. Timber for Props.

The owner or operator of any coal mine shall provide a sufficient supply of timber at any such mine where the same is required for use as props, so that the workmen may at all times be able to properly secure their working places, and it shall be the duty of the owner or operator to

send down into the mine all such props, the same to be delivered at the entrance to the working place, or as may be agreed upon between the employees and the operator. [L. '17, p. 142, § 86.]

§ 8722. Sales or Leases Reported to Inspector.

Any mine owner transferring any coal mine shall immediately report such sale or lease to the mine inspector, giving the name or the names of the purchaser, purchasers, or lessee, and the address or addresses of the same. The purchaser, purchasers, or lessee of any such coal mine shall also immediately report to the mine inspector giving the names of the officers and superintendent of such coal mine, with their addresses. [L. '17, p. 142, § 87.]

§ 8723. Accidents and Explosions—Coroner's Inquests—Investigation by Inspector.

Whenever by reason of any explosion or any other accident in or about any coal mine, whereby loss of life or serious injury has occurred, or is thought to have occurred, it shall be the duty of the person having charge of the mine to give notice thereof to the mine inspector by telephone or telegraph, and if any person is killed thereby, to the coroner of the county, who shall give due notice to the mine inspector if an inquest is to be held. If the coroner shall determine to hold an inquest, the mine inspector shall be allowed to testify and offer such testimony as he shall deem necessary to thoroughly inform the said inquest of the cause of death, and the said inspector shall have authority at any time to appear before such coroner and jury and question or cross-question any witness, and in choosing a jury for the purpose of holding such inquest it shall be the duty of the coroner to impanel a jury no one of whom shall be directly or indirectly interested. It shall be the duty of the mine inspector upon being notified as herein provided, to immediately repair to the scene of the accident and make such suggestions as may appear necessary to secure the safety of the men, and if the results of the explosion or accident do not require an investigation by the coroner, he shall proceed to investigate and ascertain the cause of the explosion or accident, and make a record thereof which he shall file as provided for, and to enable him to make the investigation he shall have the power to compel the attendance of persons to testify, and administer oaths or affirmations. The cost of such investigation shall be paid by the county in which the accident occurred, in the same manner as costs of inquests held by coroners or justices of the peace are paid, and copies of evidence taken at inquests shall be furnished the mine inspector. [L. '17, p. 142, § 88.]

§ 8724. Steampipes to be Encased in Asbestos.

No steampipes, through which high pressure steam is conveyed for the purpose of driving pumps or other machinery, shall be laid on traveling or haulage ways, unless they are encased in asbestos or some other suitable material, or so placed that the radiation of heat into the atmosphere of the mine will be prevented as far as possible. [L. '17, p. 143, § 89.]

§ 8725. Steam Locomotives in Mines.

When a steam locomotive is used for the purpose of hauling coal out of a mine, the tunnel or tunnels through which the locomotive passes shall be properly ventilated and kept free as far as practicable of noxious gases. The use of steam locomotives shall be prohibited in any mines opened in the state after the passage of this act, or in mines already opened that are not now using the same. [L. '17, p. 143, § 90.]

§ 8726. Excessive Coal Dust—Protection Against Explosion.

In any mine or part of mine where, from the nature of the coal or method of handling the same, an undue quantity of dust is produced either on the roadways or in the working places, which may tend to cause danger of explosion, then all the haulage ways leading thereto and all the haulage roads and working places in such section of the mine, shall be thoroughly and effectively watered by some recognized and approved system of watering, or other treatment equivalent to watering. If, in the opinion of the inspector, an undue quantity of dust is produced and the method employed is not adequate or effective, he may notify the manager in writing and proceed as provided for in section 8644, article II: Provided, however, that the provisions of this section shall not apply to any mine or separate split or panel of such mine if no explosives are permitted and safety lamps are used in such separate part of the mine, unless in the opinion of the inspector this exemption would be dangerous to the persons employed in such section or part of the mine. [L. '17, p. 144, § 91.]

§ 8727. Stables in Mines—Storage of Hay and Straw—Lining of Pump-rooms.

It shall not be lawful to provide a horse or mule stable in any mine unless the same is excavated in solid rock, or built or thoroughly lined with a fireproof material; and all openings to such stables shall be equipped with fireproof doors, free from all obstruction, which can be closed in case of fire.

No hay or straw shall be taken into any mine unless pressed and made up into compact bales, which shall be kept in a storehouse built apart from the stable and in the same manner as the stable. Under no circumstances shall the hay or straw be stored in the stable.

All permanent underground pump-rooms must be thoroughly lined with fireproof material, unless the same are excavated in solid rock. [L. '17, p. 144, § 92.]

§ 8728. Weighing Coal Before Screening.

It shall be unlawful for any mine owner, lessee or operator of coal mines in the state of Washington, employing miners at ton rates, to pass the output of coal mined by said miners over any screen or other device which will take any part from the value thereof before the same shall have been duly weighed and credited to the employee sending the same to the surface, and accounted for at the legal rate of weights as fixed by the laws of the state of Washington. [L. '17, p. 144, § 93.]

§ 8729. Equipment of Escapement Shafts—Signboards.

All escapement shafts or slopes over thirty (30) degrees pitch shall be equipped with stairways or ladders having landing places or platforms at reasonable distances apart or, in lieu thereof, such hoisting apparatus as will enable the employees in the mine to make safe and speedy exit in case of danger. At all points where the passageway to the escapement shaft and other places of exit is intersected by other roadways or entries, conspicuous signboards, subject to the approval of the mine inspector shall be placed indicating the direction it is necessary to take in order to reach such place of exit. [L. '17, p. 145, § 94.]

§ 8730. Width of Barrier Pillars.

The operator of every coal mine shall leave barrier pillars at least fifty (50) feet in width along the line of the property he operates; failure to do so shall constitute a gross misdemeanor and he shall be subject to a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000), or imprisonment of not less than six months: Provided, however, that nothing herein shall be construed as forbidding owners or operators of adjacent properties from extracting all the coal after they have agreed that same might be done. [L.'17, p. 145, § 95.]

§ 8731. Operator's Reports—Annual and Monthly.

On or before the twenty-fifth day of January in each year, the operator or superintendent of every mine shall send to the office of the state mine inspector a correct report specifying with respect to the year ending the thirty-first day of December preceding, containing the following:

Name of company
Postoffice address

<i>Officers</i>	<i>Name</i>	<i>Address</i>
President		
Manager		
General superintendent		
Mining engineer		
Superintendent		
General foreman		
Outside foreman		
Inside mine foreman		
Location of mine		
On what railroad		
Principal market		
Average value of coal per short ton at mine		
Average value of coke per short ton at mine		
Price paid per gross ton for mining		
Are wages paid monthly or semi-monthly		
Number of feet of gangway or entry driven		
Also number of feet of slope or shaft driven or sunk during year		
Scale of wages paid above ground		
Scale of wages paid under ground in the different classes		

A report of ventilating and other important machinery installed during the year.

A report of new openings.

On or before the last day in each month, or as soon thereafter as possible to compile such data, the operator or superintendent shall also furnish the state mine inspector with a monthly report relative to the month preceding, containing the following information:

Name of company
 Name or number of mine
 Location of mine
 County

REPORT IN SHORT TONS.

No. tons of coal shipped
 No. sold to employees and local trade
 No. used for power
 No. charged into ovens for coke
 Total production of coal
 Total production of coke
 No. days operated
 No. inside employees
 No. outside employees
 No. killed
 No. injured
 No. widows
 No. orphans

The operator or the superintendent who fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor. [L. '17, p. 145, § 96.]

§ 8732. Shelter Holes.

The operator shall provide that all mechanical haulage roads, driven after this act takes effect, where separate traveling ways are not maintained, where general clearance is less than two and one-half (2½) feet on one side shall be provided with shelter holes not more than sixty (60) feet apart, giving clearance not less than three (3) feet wide and four (4) feet high along the road. They shall be kept whitewashed. [L. '17, p. 147, § 97.]

§ 8733. Safeguarding Machinery and Stairways.

All machinery used in or about any mine that when in motion would be dangerous to persons coming in contact therewith, such as engines, wheels, screens, shafting, gears and belting, shall be guarded by covering or railing to prevent persons from walking or falling against same. All sides of stairs, trestles and platforms around mines shall be provided with hand and guard railing to prevent persons from falling over the sides. [L. '17, p. 147, § 98.]

ARTICLE IX. DUTIES OF OFFICIALS.

§ 8734. Superintendent's Duties.

The superintendent shall, at least once every week, read, examine carefully and countersign all reports entered in the mine record book by the mine foreman, and if he finds on such examination that the law is being violated in any particular, he shall order the mine foreman to stop such violation forthwith, and shall see that his order is complied with. [L. '17, p. 147, § 99.]

§ 8735. Supervision of Officials.

The superintendent shall not obstruct the mine foreman or other officials in the fulfillment of any of their duties, as required by this act, but he shall direct that the mine foreman and all other employees under him comply with the law in all its provisions. [L. '17, p. 147, § 100.]

§ 8736. Visits to Working Places.

It shall be the duty of every mine superintendent to visit, or to have his assistant superintendent visit every working place in every mine under his charge once every sixty (60) days: Provided, that the mine foreman shall not be considered as the assistant to the superintendent for this purpose. [L. '17, p. 148, § 101.]

§ 8737. Operator's Duties.

The operator shall keep on hand at the mine a supply of the printed rules and notices and record books required by this act. He shall see that the rules and notices are posted in conspicuous places at or near the entrance to the mine and kept in such condition that they will always be legible. [L. '17, p. 148, § 102.]

§ 8738. Foreman's Duties.

The mine foreman shall keep a careful watch over the ventilating apparatus, the ventilation, airways, traveling-ways, timbering and drainage, and shall see that all stoppings along the airways are properly built. He shall also see that the proper crosscuts or breakthroughs are made in the pillars of all chutes, breasts, rooms, gangways, entries and levels, in accordance with this act, and that they are closed when necessary so that the ventilating current can be conducted in sufficient quantities through the last crosscut or breakthrough and to the working places by means of brattices or other devices, and all other duties pertaining to the safety of the men, as provided for in this act. [L. '17, p. 148, § 103.]

§ 8739. Charge of Workings and Employees.

The mine foreman shall have charge of all inside workings and of the persons employed therein, in order that all of the provisions of this act as far as they relate to his duties concerning the safety of the mine and the persons employed therein be complied with, and the regulations prescribed for each class of workmen under his charge be carried out in the strictest manner possible. [L. '17, p. 148, § 104.]

§ 8740. Daily Record of Condition of Mine—Countersigning Fire Boss' Book.

The mine foreman shall each day write and sign with ink in a book provided for that purpose, a report of the general condition of the mine, which report shall clearly state any unusual danger that may have come under his observation during the day, or any unusual danger reported to him by his assistants, or by the fire bosses. The report shall also state the manner in which the requirements of the law are not complied with.

He, or his assistant, shall also once each week enter plainly with ink in said book a true report of all air measurements required by this act, designating the place, the area of each breakthrough and entry separately, the velocity of the air in each breakthrough and entry, and the number of men employed in each separate split of air, with the date when measurements were taken. Said book shall at all times be kept in the main office at the mine for examination by the inspector and by any persons working in the mine. Such examinations made by others than inspectors shall be in the presence of the superintendent or mine foreman.

The mine foreman shall also each day read carefully and countersign in ink all reports entered in the fire bosses' book. [L. '17, p. 148, § 105.]

§ 8741. Drill in Use of Escapements.

In order that men may familiarize themselves with escapements to be used in case of accidents, it shall be the duty of the mine foreman to cause all miners and other underground employees to walk or climb to or from their working places to the surface by way of one of the traveling-ways, escapements, or outlets, at least once every six months. [L. '17, p. 149, § 106.]

§ 8742. Posting Danger Signs—Interrupted Ventilation.

When operations are temporarily suspended in a mine, the mine foreman shall see that a danger sign is placed across the mine entrance, which sign shall be sufficient warning for persons not to enter the mine. If the circulation of air through the mine is stopped, each entrance to said mine shall be fenced off in such manner as will ordinarily prevent persons from entering said mine, and a danger sign shall be displayed upon said fence at each entrance. The mine foreman shall see that all danger signs used at the mine are in good condition, and if they become defective he shall cause same to be repaired, or notify the superintendent.

In case of accident to a ventilating fan or its machinery whereby the ventilation in a mine is, or is about to be seriously interrupted, the mine foreman shall order the men to withdraw immediately from the mine, and he shall not allow them to return to their work until the ventilation has been restored and the mine has been thoroughly examined by him, or by an assistant mine foreman or fire boss, and reported safe.

In case the operation of the ventilating fan is stopped at a gaseous mine because of the suspension of the operations in the mine, the mine foreman shall not allow the men employed therein to enter the mine until the ventilation has been restored by the operation of the fan for at least twelve hours and the mine has been thoroughly examined by him, or by

an assistant mine foreman or fire boss, and reported safe. [L. '19, p. 706, § 5; L. '17, p. 149, § 107.]

§ 8743. Removal of Dangerous Conditions—Weekly Examination.

Whenever any dangerous condition is known to exist, or is reported by others to the mine foreman, he shall give prompt attention to its removal, and in case it is impracticable to remove the danger at once, he shall notify every person whose safety is menaced thereby to remain away from the place that the dangerous conditions affect. He or his assistant shall once each week travel and examine all the air courses and traveling-ways, and in addition all the openings that give access to old workings or falls. He shall record and sign in ink in a book provided for that purpose the results of these weekly examinations. [L. '17, p. 150, § 108.]

§ 8744. Precautions Against Gas and Water.

In any working place that is being driven within supposedly dangerous proximity to an abandoned mine suspected of containing explosive gases, or that may contain a dangerous accumulation of water, the mine foreman shall see that at least one bore hole shall be maintained not less than twenty (20) feet in advance of the face; and in a seam of coal on either side of the bore hole, flank holes shall be driven not less than twelve (12) feet in advance, and any place driven to tap water or gas shall not be more than eight (8) feet wide. [L. '17, p. 150, § 109.]

§ 8745. Checking Fire Bosses.

The mine foreman shall see as often as practicable, that the fire boss has left his mark, as required by this act, in places examined or reported examined. [L. '17, p. 150, § 110.]

§ 8746. Visits to Each Shaft.

The mine foreman, his assistant, or fire boss, shall visit each working place once each shift while the employees are at work, and in addition thereto shall give special care, oversight and attention to the men drawing pillars. [L. '17, p. 150, § 111.]

§ 8747. Care of Injured Workmen.

It shall be the duty of the mine foreman, or his assistant, in case of injury to employees while at work in the mine, to at once visit the scene of the accident, see that the injured person or persons are given all the aid that can possibly be given which will add to their comfort and safety. After being treated with all the skill known to the foreman or his assistant, the injured person or persons shall be carefully wrapped up and taken to their homes or the hospital. [L. '17, p. 151, § 112.]

§ 8748. Duties of Fire Boss.

It shall be the duty of the fire boss to examine carefully not more than three (3) hours before a first shift enters the mine, every working place in his charge in which men have not been employed at the working face within ninety (90) minutes previous to the starting time of such shift all open places adjacent to live workings, and every unfenced road

to abandoned workings. He shall see that the air current is traveling in its proper course. In making the examination he shall use no other than an approved safety lamp. The fire boss shall examine for all dangers in all portions of the mine under his charge, and after each examination he shall leave at or near the working face of every place examined the date of the examination as evidence that he has performed his duty. [L. '17, p. 151, § 113.]

§ 8749. Danger Signs for Explosive Gas.

At the entrance to and in crosscuts or breakthroughs to any working place where explosive gas is discovered or where there is immediate danger found to exist from any other cause, the fire boss shall place a danger sign, which shall be sufficient warning for persons not to enter.

The danger sign shall consist of a lagging, board or piece of timber, or other obstruction, placed across the entrance to the working place, and in crosscuts and breakthroughs open to such working place, so that it is distinctly visible and marked plainly showing that danger exists beyond. [L. '17, p. 151, § 114.]

§ 8750. Discoveries of Gas Bulletined—Office Record.

Each fire boss shall, immediately after making his inspection and before the employees are allowed to enter the mine, report on a bulletin board provided for that purpose at the entrance to the mine, a true record of such inspection, designating each place where gas is found, also that all other places are clear. A like report of such inspection shall immediately be made by the fire boss, with ink, in a book kept for that purpose at the mine office on the surface, and in addition shall set forth the time of the inspection, the reason for the presence of any danger found, the means taken and by whom for the removal of same. If explosive gas is found the report shall show as near as possible the amount found, and time the place was clear. The fire bosses' record shall, at all times, be accessible to the mine inspector or his deputy, and to the employees of the mine in the presence of a mine official. The fire boss, mine foreman, or his assistant must re-examine all places in which gas is reported in advance of employees working in such places. After making such examination he shall personally direct the removal of said gas or other danger. Gas shall not be removed by brushing. [L. '17, p. 152, § 115.]

§ 8751. Employment of Skilled Shot-firers.

In all parts of a mine where explosive gas is being generated, or dust exists in such quantities as to be dangerous or liable to cause an explosion from blowout or windy shots, there shall be employed a sufficient number of competent persons to act as shot-firers, whose duty it shall be to fire all shots properly placed by the miners, and refuse to fire any shots improperly placed. No blasts in such part of a mine shall be fired by any other person than a shot-firer, fire boss or foreman. Incombustible material for tamping must be used for that purpose, and the mine foreman shall supply same at convenient places inside the mine. Under no circumstances shall coal dust or any other combustible material be used for tamping. Each shot firer shall report to the fire boss, mine foreman, or

his assistant, every shot that he has refused to fire, every blown out shot, and every shot that has missed fire, and a record shall be kept of same. [L. '17, p. 152, § 116.] .

§ 8752. Shot-firing.

No shot-firer or any other person shall fire a shot in any working place if he can detect explosive gas in the place. In dusty mines no shot shall be fired unless the place in which the shot is to be fired is thoroughly wetted or otherwise treated to prevent the existence of any dust for a distance of not less than one hundred (100) feet from the shot to be fired. [L. '17, p. 153, § 117.]

ARTICLE X. MINE RESCUE EQUIPMENT.

§ 8753. Rescue and Reviving Apparatus — Supplies — Monthly Examination and Reports.

Within one year after this act goes into effect, every mine employing as many as twenty (20) underground men, shall have and maintain ready for use at all times, at least three (3) sets of mine rescue apparatus, and one reviving device, of a type approved by the United States bureau of mines.

For each one hundred (100) underground men in addition to the first twenty (20), one additional apparatus shall be maintained, up to six (6) sets.

At every mine where mine rescue equipment is maintained, supplies for same shall be kept on hand to last at least twenty-four (24) hours. The superintendent of the mine, or some person designated by him for that purpose, shall examine each apparatus once each month and report the condition of same, also the amount of supplies on hand at the time of such examination. This report shall be made in writing by the person making the examination and a record of same shall be kept at the mine office and shall be accessible to the mine inspector or his deputy at all times.

Whenever two or more mines are operated by the same company within a radius of seven (7) miles, they shall be considered as one mine. However, mines within a radius of seven (7) miles and connected by a wagon road or railroad, may agree to equip and maintain one central station at which there shall not be less than six (6) apparatuses and one reviving device; when more than four (4) mines are associated at one central station, an additional machine must be added. [L. '17, p. 153, § 118.]

§ 8754. Stretchers.

The operator or superintendent of every mine employing from five (5) to fifty (50) persons, shall provide and keep in good condition near the principal entrance to the mine, one stretcher. When more than fifty (50) persons are employed, they shall keep at least two stretchers. These stretchers shall be used for conveying to his abode, or to the hospital if necessary, any person who may be injured while in the discharge of his duties. [L. '17, p. 154, § 119.]

§ 8755. Blankets.

Suitable woolen blankets shall be kept on hand for each stretcher. [L. '17, p. 154, § 120.]

§ 8756. Bandages, Splints and Medical Supplies.

At all times there shall be provided bandages, splints, and other medical supplies, to render first aid and relief to employees who may be injured. These supplies shall be kept in a suitable room near the entrance to the mine. [L. '17, p. 154, § 121.]

§ 8757. First Aid Supplies.

At each working level, or entry, of every mine in this state, the operating company shall maintain a box of first aid supplies equivalent to the American Red Cross (industrial) first aid box. If these boxes are kept locked, the keys shall always be near at hand and plainly visible. Such keys may be kept under glass as a fire alarm box key is kept. Additional keys may be given to employees selected by the mine foreman on each level or working section of the mine. The foreman shall keep a list of those who have keys in their possession posted on the (industrial) first aid box nearest their working places. In addition to the above first aid boxes, the operating company of each mine shall furnish each driver or motorman with a metallic covered packet equivalent to those sold by the American Red Cross. At all times when they are underground or at their respective places of employment, said drivers or motormen shall have the metallic packets in their possession. Failure of the operator to provide the supplies required by this section shall constitute a misdemeanor. Any person destroying or stealing any of the first aid supplies shall be guilty of a misdemeanor. [L. '17, p. 154, § 122.]

ARTICLE XI. POWDER AND EXPLOSIVES.**§ 8758. Safeguarding Explosives.**

Every person who has powder or other explosives in a mine shall keep the same in a proper, closed receptacle. Said receptacle shall be kept as far as practicable from the track or chute; and all powder receptacles shall be kept as far as practicable from each other, and each in a secluded place. Detonators shall at all times be kept in securely closed cases separate and apart from other explosives, until required for use. [L. '17, p. 155, § 123.]

§ 8759. Use of Lamps and Lighted Pipes Near Explosives—Opening Receptacles.

Whenever a workman using an open light is about to open a receptacle containing explosives, and while handling the explosives, he shall place and keep his lamp at least five (5) feet distant from said explosive and in such position that the air currents cannot convey sparks to it, and at such time no person shall approach nearer than five (5) feet to any explosive with an open lamp, lighted pipe, or anything containing fire, except safety lamps, unless such explosive is contained in a proper closed receptacle. No miner, workman, or other person shall open any receptacle

containing an explosive except in the manner prescribed by the manufacturer thereof, and it shall be unlawful for any person to have in his possession in any mine any receptacle containing explosives which has been opened in violation of this act. [L. '17, p. 155, § 124.]

§ 8760. High Explosives.

No high explosive shall be stored in any mine and no more shall be taken into any mine at any one time, by any person, than is required in one shift. The quantity used shall be subject to the approval of the mine inspector. [L. '17, p. 155, § 125.]

§ 8761. Firing Dependent Shots—Permit.

No person shall fire a dependent shot in the coal as hereinafter defined. A dependent shot is a shot dependent on another shot so placed as to make an opening sufficient for the dependent shot to do its work properly. At mines where solid shooting is allowed the opening shot shall be fired first and no dependent shot shall be fired at that time. In no case shall more than one kind of explosive be used in the same drill hole: Provided, that in any mine where the coal bed worked is less than three (3) feet between walls and no gas or dust is present, where it can be shown to the satisfaction of the mine inspector that the above rule would prohibit the operating company to mine the coal at a profit, the mine inspector may grant him a permit to suit his conditions. [L. '17, p. 155, § 126.]

§ 8762. Black Powder, How Handled.

Black powder for use in mines shall be put up in metallic cans or canisters, or receptacles of equally safe material. No black powder, high explosive, or detonators shall be hauled on any electric motor trip in any mine, unless the same are encased in nonconductive boxes or receptacles: Provided, that they may be hauled in nonconductive car.

No black powder, other than that taken by each man for his own use, shall be hauled on man trips. [L. '17, p. 156, § 127.]

§ 8763. Tamping Bars—Depth of Blast Holes.

The needle used in preparing a blast of black powder shall be made of copper, and the tamping bar shall be tipped with at least five (5) inches of solid copper. All other explosives where a cap or detonator is used for the purpose of exploding the blast, shall be tamped with a wooden tamping bar. In no case shall iron or steel or other metal that is liable to cause a spark while tamping, be used for the purpose of tamping any explosive. Neither shall a scraper be used for tamping. It shall be unlawful for any person to have in his possession in the mine underground, any iron or steel needle or tamping bar not tipped as above required.

No hole shall be drilled more than six (6) feet in depth for the purpose of blasting: Provided, however, that where mining machines are used holes may be drilled to the depth of the cut.

Any violation of this section shall be a misdemeanor and the offender shall be punished under the provisions of this act. [L. '17, p. 156, § 128.]

§ 8764. Storage of Explosives—Issuance to Workmen.

Each person, firm or corporation, engaged in coal mining, requiring the use of powder or other explosives, shall provide (subject to the approval of the mine inspector) at or near the entrance of each coal mine operated, at some suitable place near such work, a suitable distributing magazine for the storage of such powder or other explosives. There shall be posted upon such magazine a notice printed in letters not less than three (3) inches in height, that such magazine contains explosives. No person shall store or keep in any magazine mentioned in this section, any powder or other explosive in excess of one ton. Such powder or other explosives shall be issued daily in quantities not to exceed the amount used by each workman in one shift, in proper receptacles. Any miner taking powder into the mine and having to return the same on account of not being able to work, may return the same to the operator and the operator shall receive it. Any person or corporation violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor. [L. '17, p. 157, § 129.]

§ 8765. Penalty for Keeping Explosives in Residence or Outhouse.

Any person who shall store or keep any powder or other explosive in any quantity greater than one pound in any occupied dwelling-house or residence, or in any outhouse appertaining thereto, within three hundred (300) feet of any dwelling, shall be guilty of a misdemeanor. [L. '17, p. 157, § 130.]

ARTICLE XII. SAFETY LAMPS.**§ 8766. Safety Lamps to be Used—Examination.**

In every working of a coal mine approaching any place where there is likely to be an accumulation of explosive gases, or in any working place where there is imminent danger from explosive gases, no light or lamp other than a magnetic locked safety lamp or electric lamp shall be allowed or used, except by superintendents, shotlighters or other certified men, who may use such lamps as may be approved by the mine inspector.

Whenever safety lamps are required in any mine they shall be the property of the owner of said mine, and a competent person who shall be appointed for that purpose shall examine every safety lamp immediately before it is taken into the workings for use and ascertain it to be clean, safe and securely locked; and safety lamps shall not be used until they have been examined and found safe, clean and securely locked. [L. '17, p. 157, § 131.]

§ 8767. Open Lights.

At mines where the danger from explosive gas requires the use of safety lamps, no open lights shall be used in that part or district of the mine where safety lamps are in use. [L. '17, p. 158, § 132.]

§ 8768. Tampering With Lamps or Using Other Lighting Devices—Penalty.

In any mine where locked safety lamps are used, any person other than those authorized by this act, opening or tampering with one of said

safety lamps, or found with matches or any lighting device other than safety lamps, shall be guilty of a misdemeanor and upon conviction thereof he shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), or imprisonment for a term of not more than one year: Provided, however, this shall not prohibit the use of any flame used in making repairs to any machinery or wires when such repairs are made on the intake air. [L. '17, p. 158, § 133.]

§ 8769. Failure to Use Safety Lamps—Penalty.

For the violation of any provisions of sections 8766 and 8767, the operator or employee of any mine shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), and in addition thereto the mine inspector shall have authority and it shall be his duty to close such mine until the provisions of this act shall be complied with. [L. '17, p. 158, § 134.]

§ 8770. Appeals to Mining Board—Number of Lamps.

The operator of any mine may appeal to the mining board when in his judgment the order of the mine inspector to place a mine on safety lamps is unreasonable. The decision of the board shall be final.

At every mine in this state the operator shall provide and maintain in condition for use, not less than four (4) approved safety lamps. [L. '17, p. 158, § 135.]

ARTICLE XIII. SHAFT SINKING.

§ 8771. Shaft Driving to be Inspected.

Any shaft or other opening in process of opening or driving for the purpose of mining coal shall be subject to the inspection of the mine inspector. [L. '17, p. 159, § 136.]

§ 8772. Prevention of Falling Material.

Over every shaft that is being sunk, or that shall hereafter be sunk, there shall be a safe and substantial structure erected to support the sheaves or pulleys at a height of not less than twenty-five (25) feet above the tipping place. The landing platform of such shaft shall be so arranged that material cannot fall down the shaft while the bucket is being emptied or taken from the hoisting rope. If provisions are made to land the bucket on a truck, said truck and platform shall be so arranged that material cannot fall into the shaft. [L. '17, p. 159, § 137.]

§ 8773. Hoisting Methods.

Rock or coal shall not be hoisted except in a bucket or on a cage when men are in the bottom of a shaft, and said bucket or cage must be connected to the hoisting rope by a safety hook or clevis or other safety attachment, and said bucket shall be so arranged that there will be no danger of its tipping over while the bucket is being hoisted or lowered. The rope shall be fastened to the side of the drum, and not less than three coils of rope shall always remain on the drum. In shafts

over one hundred (100) feet in depth, such shafts shall be provided with guides and guide attachments applied in such manner as to prevent the bucket from swinging while descending or ascending, and such guide or guide attachment shall be maintained at a distance of not more than seventy-five (75) feet from the bottom of such shaft, until its sinking shall have been completed. [L. '17, p. 159, § 138.]

§ 8774. Shaft Platforms.

Whenever persons are employed on platforms in shafts the person in charge must see that said platforms are properly and safely constructed and secured. [L. '17, p. 159, § 139.]

§ 8775. Shaft Level to be Made Secure.

Where the strata are not safe, every shaft level shall be securely cased, lined, or otherwise made secure, and the person in charge shall see that all loose rock or other material on the sides of the shaft, or on the timber in the shaft, shall not be allowed to remain on said timber or sides of the shaft after each blast. [L. '17, p. 159, § 140.]

§ 8776. Examination for Gas—Blasts Exploded by Electric Battery.

Where explosive gas is encountered in sinking shafts, the person in charge shall see that the shaft is examined before each shift of men enters to work and before the men descend after each blast. All blasts in shaft sinking shall be exploded by an electric battery placed on the surface. [L. '17, p. 160, § 141.]

§ 8777. Ventilation.

Provisions shall be made for the proper ventilation of shafts while they are being sunk. [L. '17, p. 160, § 142.]

§ 8778. Restriction on Riding Buckets.

Not more than four (4) persons shall be hoisted or lowered in or on a bucket in a shaft at one time, and no person shall ride on a loaded bucket. [L. '17, p. 160, § 143.]

ARTICLE XIV. RULES FOR THE INSTALLATION OF ELECTRICITY.

§ 8779. Compliance With Rules—Definitions.

The operator, superintendent, or mine foreman in charge of any coal mine in which electricity is used as a means of power, shall, within six (6) months after the passage of this act, comply with the following rules:

DEFINITIONS.

Potential: The terms "potential" and "voltage" are synonymous and mean electrical pressure.

Difference of Potential: The expression "difference of potential" means the difference of electrical pressure existing between any two points of an electrical system, or between any point of such system and the earth, as determined by a volt meter.

Potential of a Circuit: The potential or voltage of a circuit, machine, or any piece of electrical apparatus, is the potential normally existing between the conductors of such circuit or the terminal of such machine or apparatus.

(a) Where the conditions of the supply of electricity are such that the difference in potential between any points of the circuit does not exceed three hundred (300) volts, the supply shall be deemed a low voltage supply.

(b) Where the conditions of the supply of electricity are such that the difference in the potential between any two points in the circuit may at any time exceed three hundred (300) volts, but does not exceed six hundred (600) volts, the supply shall be deemed a medium voltage supply.

(c) Where the conditions of the supply of electricity are such that the difference of potential between any two points in the circuit exceeds six hundred (600) volts, the supply shall be deemed a high voltage supply.

Grounding: Grounding any part of an electric system shall consist in so connecting such part to the earth that there shall be no difference of potential between them.

Underground Station: An underground station is herein considered as any place where electrical machinery is permanently installed. [L. '17, p. 160, § 144.]

§ 8780. Necessary Grounding.

All metallic coverings, armoring of cables other than trailing cables, and, where installed underground, the frames and bed-plates of generators, transformers and motors, other than low voltage portable motors, shall be efficiently grounded, as shall also the neutral wire of three wire continuous current systems. [L. '17, p. 161, § 145.]

§ 8781. Voltage in Underground Workings.

No higher voltage than medium voltage shall be used underground, except for transmission or for application to transformers, or other apparatus, in which the whole of the high voltage circuit is stationary.

In gaseous mines, high voltage transmission cables shall be installed in the intake airways only, and high voltage transformers shall be installed only in suitable chambers ventilated by the intake air which has not passed through or by a gaseous district.

All high voltage machines, apparatus, and lines shall be so marked as to clearly indicate that they are dangerous by the use of the word "danger" placed at frequent intervals. [L. '17, p. 161, § 146.]

§ 8782. Material Used in Switchboards.

Switchboards: Main and distribution switch and fuse boards, underground, shall be made of incombustible insulating material, such as marble or slate, free from metallic veins, and be fixed in as dry a situation as practicable. [L. '17, p. 162, § 147.]

§ 8783. Insulating Material.

Precaution Against Shock: Gloves or mats of rubber or other suitable insulating material shall be provided and used by persons so engaged

when repairs are made to the live parts of any electrical apparatus, or when the live parts of electrical apparatus have to be handled for the purpose of adjustment. [L. '17, p. 162, § 148.]

§ 8784. Interference With Electrical System.

Any person who shall willfully damage, or, without authority, alter or make connection to any portion of a mine electrical system, shall be guilty of a misdemeanor. [L. '17, p. 162, § 149.]

§ 8785. Defects to be Reported.

Report of Defective Equipment: In the event of a breakdown, or of damage or injury to any portion of the electrical equipment of a mine, or of overheating, or of the appearance of sparks or arcs outside of inclosing casings, or in the event of any portion of the equipment, not a part of the electrical circuit, becoming alive, every such occurrence shall be promptly reported to the person in charge of the electrical equipment. [L. '17, p. 162, § 150.]

§ 8786. Installation of Equipment—Passageways at Switchboards—Entrances—Fire-extinguishers.

Underground Stations and Transformer Rooms: Switchboards: All switches, circuit-breakers, rheostats, fuses and instruments used in connection with underground motor-generators, rotary converters, high voltage motors, transformers, and low and medium voltage motors of more than fifty (50) horse-power capacity, shall be installed upon a suitable switchboard, or its equivalent. Similar equipment, for low and medium voltage motors of fifty (50) horse-power and less, may be separately installed if mounted upon installing bases of slate or equivalent insulating material.

In underground stations where switchboards are installed, there shall be a passageway in front of the switchboard not less than five (5) feet in width, and if there are any high voltage connections at the back of the switchboard, any passageway behind the switchboard shall not be less than three (3) feet clear.

Unauthorized Persons: No person other than one authorized by the mine foreman shall enter a station or transformer-room, or interfere with the workings of any apparatus connected therewith.

Fire Equipment: Fire equipment of an approved type shall be kept in electrical stations and transformer-rooms, ready for immediate use in extinguishing fires. [L. '17, p. 162, § 151.]

§ 8787. Insulation.

Transmission Circuits and Conductors: Power and Light Circuits: All high-pressure wires used inside of the mines shall be in the form of insulated, lead covered or armored conductors, subject to insulation tests, and with carrying capacity according to the rules of the National Board of Fire Underwriters.

Medium or low pressure conductors may be bare, except in gaseous portions of the mines, where they may be used only on intake air. No

bare conductors shall be used in rooms, or beyond the last cut-through in intake entries. •

All underground cables and wires, other than trailing cables, unless provided with grounded or metallic covering, shall be supported by means of efficient insulators. Conductors connecting lamps to the power supply shall in all cases be insulated.

Main Circuits: Every main circuit coming from generating or transformer stations shall there be provided with switches, fuses or circuit breakers.

In any gaseous mine, or gaseous portion of a mine, the electrical supply shall be brought underground only through such portions of the mine as are ventilated by the intake air, unless in lead incased cables.

Grounded Circuits: One side of the grounded circuits shall be very effectively insulated from earth.

Underground Trolley: In underground roads the trolley wires shall be securely supported on hangers placed at such intervals that the sag between points of support shall not exceed three inches. The sag between points of support can exceed three inches if the height of the trolley wires above the rail is five (5) feet or more and does not touch the roof when the trolley passes under.

In underground haulage roads where the potential is higher than low voltage, all trolley or other bare power wires which are placed less than six and one-half ($6\frac{1}{2}$) feet above the top rail, shall be efficiently protected. This protection shall consist in placing boards along the wire, which shall extend below it, or the use of other approved devices that will afford the same protection: Provided, that this rule shall not apply to entries or gangways already driven where the height is less than five (5) feet above the lower rail.

All low pressure trolley wires must be guarded in front of loading chutes, slants, landings and partings where men are required to regularly work or pass under same.

All branch trolley lines shall be fitted with an automatic trolley switch or section insulator and line switch, or some other device that will allow the current to be shut off from such branch headings.

Joints in Conductors: All joints in conductors shall be mechanically and electrically efficient, and wherever it is possible to do so, they shall be soldered. Wherever the conductors cannot be soldered together, suitable screw clamps or connectors shall be used. All joints in insulated wire shall, after the joint is complete, be reinsulated to at least the same extent as the remainder of the wire.

Where lead covered or armored cable is used, the lead or armor shall be electrically continuous throughout and shall be efficiently grounded.

Cables Entering Fittings: The exposed end of cables where they enter fittings of any description, shall be so protected and finished off that moisture cannot enter the cable, or the insulating material, if of an oily or viscous nature, leak.

Where unarmored cables or wires pass through metal frames, or into boxes or motor casings, the holes shall be substantially bushed with insulating bushings, and, where necessary, with gas tight bushings which cannot readily become displaced.

Joints in Cables: Where cables other than signal cables are joined, suitable junction boxes shall be used, or the joints shall be soldered and the insulation, armoring, or lead covering replaced in at least as safe a condition as it was originally.

Power Wires and Cables in Shafts: All power wires and cables in hoisting shafts or manway compartments shall be highly insulated and substantially fixed in position.

Cables and wires, unless provided with metallic covering shall not be fixed to walls or timbers by means of insulated fastenings.

Trailing Cables: Trailing cables for portable machines shall be especially flexible, heavily insulated and protected with extra stout braiding, hose-pipes or other equally effective covering.

Each trailing cable in use shall be daily examined by the machine operator, for abrasions and other defects, and he shall also be required to carefully observe the trailing cable while in use, and shall at once report any defect to the person in charge of electrical equipment.

In gaseous portions of a mine a fixed terminal box shall be provided at the points where trailing cables are attached to the power supply. This terminal box shall be flameproof and shall contain a switch and fuse on each pole of the circuit. The switch shall be so arranged that it can be operated only from without the box, when the latter is completely closed, and the switch shall also be so constructed that the trailing cables cannot be attached or removed when the switch is closed. [L. '17, p. 163, § 152.]

§ 8788. Switches, Fuses and Circuit Breakers—Operation and Capacity.

Fuses and automatic circuit breakers shall be so constructed as effectually to interrupt the current on short circuit, or when the current through them exceeds a predetermined value.

Circuit breakers shall be adjusted to trip at from fifty (50) per centum to one hundred and fifty (150) per centum of their normal rating capacity, and provided with an indicator which shall show at what current the circuit breaker is set to trip.

Fuses shall be stamped or marked, or shall have a label attached indicating the maximum current which they are intended to carry. Fuses shall only be adjusted or replaced by a competent person authorized by the mine foreman.

Feeder Circuit Breakers: Circuit breakers used to protect feeder circuits shall be set to trip when the current exceeds by more than fifty (50) per centum the current carrying capacity of the feeder. In case the feeder is subject to overloads sufficient to trip the circuit breaker, but of short duration, the circuit breaker may be equipped with a device which shall prevent its acting unless the overload persists for a longer period than ten seconds.

Bases: All switches, circuit breakers and fuses shall have incombustible bases.

Switches: All points at which a circuit, other than a signal circuit, has to be made or broken, shall be provided with proper switches. The use of hooks or other makeshifts is prohibited, except that connection for gathering locomotives, or locomotives and machines used in driving

headings or rooms, may be made to the trolley by means of suitable hooks, switches shall be so installed that they cannot be closed by gravity. In any gaseous portions of a mine switches, circuit breakers or fuses shall not be of the open type, but must be inclosed in explosion-proof castings, or break under oil. [L. '17, p. 165, § 153.]

§ 8789. Protection of Stationary Motors.

Every stationary motor underground, together with its starting resistance, shall be protected by a fuse or circuit breaking device on at least one pole for direct current, and all poles for alternating current motors, and by switches arranged to entirely cut off the power from the motor. The above devices shall be installed in a convenient position near the motor.

Motors in Gaseous Mines: In any gaseous portions of a mine all motors, unless placed in such rooms as are separately ventilated with intake air, shall have all their current carrying parts, also their starters, terminals and connections, completely closed in explosion-proof inclosures made of noninflammable materials. These inclosures shall not be opened except by an authorized person, and then only when the motor is switched off. The power shall not be switched on while the inclosures are open.

No coal-cutting machine shall be continued in operation in a gaseous portion of a mine for a longer period than half an hour without an examination being made for gas, and if the gas is found the current shall at once be switched off the machine, and the trailing cable shall be forthwith disconnected from the power supply.

The person finding gas shall at once report the fact to the fire boss or mine foreman, and the machine shall not again be started in such place until the fire boss, or a person duly authorized by the mine foreman has examined it and pronounced it safe.

The person in charge of a coal cutter or drilling machine shall not leave the machine while it is working, and shall, before leaving the working place, see that the current is cut off from the trailing cables.

In any gaseous portion of a mine if any electric sparking or arc be produced outside of a coal-cutting or other portable motor, or by the cable or rails, the machine shall be stopped and not worked again until the defect is repaired, and the occurrence shall be reported to an official of the mine.]L. '17, p. 166, § 154.]

§ 8790. Use of Electric Locomotives.

Electric Locomotives: Trolley System: Electric haulage by locomotives operated by a trolley wire is not permissible in any gaseous portion of a mine, except upon the intake air.

In no case shall the potential used in the trolley system be higher than medium voltage. In mines opened after the passage of this act, or mines that are now operating where electricity is not used, when the power is not taken from a station now operating at a mine now operating, the potential shall not be higher than low voltage.

Storage Battery System: Storage battery locomotives shall be used in gaseous mines only when the boxes containing the cells and all electrical parts are inclosed in flame-proof casings. [L. '17, p. 167, § 155.]

§ 8791. Incandescent Lamps.

In all mines the sockets of fixed incandescent lamps shall be of the so-called "weather-proof" type, the exterior of which shall be entirely nonmetallic. Flexible lamp cord connections are prohibited.

Incandescent lamps shall not be used in gaseous mines, except under the conditions where trolley locomotives are allowable. [L. '17, p. 168, § 156.]

§ 8792. Electric Shot-firing.

Shot-firing by Electricity: Shot-firing Circuits: Electricity from any grounded circuit shall not be used for firing shots.

When shot-firing cables or wires in the vicinity of power or lighting conductors, special precaution shall be taken to prevent the shot-firing cables or wires from coming in contact with the light, power or any other circuits.

Shot-firers: Only competent persons who have been properly instructed and duly authorized by the mine foreman shall be allowed to fire shots electrically in any mine.

Electric Detonators: All electric detonators and leads thereto shall be suitable for the conditions under which the blasting is carried on, and shall be of a type approved by the testing station of the federal bureau of mines. Detonators shall be kept in a dry place and never stored with any other explosives.

Portable Firing Machines and Batteries: Portable shot-firing machines, sometimes called generators, shall be inclosed in a tightly constructed case when employed in any portion of the mine. All contacts, when made or broken, shall be within the case except that the binding posts for making connections to the firing leads may be outside.

No firing machine or battery shall be connected to the shot-firing leads until all other steps preparatory to the firing of a shot have been completed, and all persons have moved to a place of safety, and no person other than the shot-firer shall make such connection.

Disconnecting of Leads: Immediately after the firing of a shot, the firing leads shall be disconnected from the supply or source of electricity, and no person shall approach a shot which has failed to explode until the firing leads have been so disconnected by the shot-firer from the device and an interval of five (5) minutes has elapsed since the last attempt to fire the shot.

Special Systems: The use of special electrical shot-firing systems, or equipment not covered by the foregoing, shall receive the approval of the testing station of the federal bureau of mines. [L. '17, p. 168, § 157.]

§ 8793. Signaling Equipment.

Electric Signalings: Precautions: All proper precautions shall be taken to prevent electric signals and telephone wires from coming into contact with the other electric conductors, whether insulated or not.

Character of Equipment: Bells, wires, insulators, contact-makers, and other apparatus used in connection with electric signaling underground, shall be of suitable design, of substantial and reliable construction, and erected in such a manner as to reduce the liability of failure or false signals to a minimum.

Maximum Potential: In any gaseous portion of a mine, the potential used for signal purposes shall not exceed twenty-four (24) volts, and bare wires shall not be used for signal circuits except in haulage roads. [L. '17, p. 169, § 158.]

ARTICLE XV. HOURS OF LABOR.

§ 8794. **Eight Hour Day.**

It shall be unlawful for any person, firm or corporation operating any coal mine within the state of Washington, to cause any employee to remain at his place of work where the same is situated underground, for more than eight (8) hours, exclusive of one-half ($\frac{1}{2}$) hour for lunch, in any one calendar day of twenty-four (24) hours. Any person, firm or corporation, or agent of any person, firm or corporation, violating the provisions of this section, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for each offense. [L. '17, p. 169, § 159.]

§ 8795. **Penalty for Violation by Workmen.**

It shall be unlawful for any person in the employ of any person, firm or corporation operating any coal mine within the state of Washington, to willfully remain at or in his working place, where the same shall be underground, to exceed eight (8) hours, exclusive of one-half ($\frac{1}{2}$) hour for lunch, in any one calendar day of twenty-four (24) hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than five dollars (\$5) nor more than twenty dollars (\$20) for each offense. [L. '17, p. 170, § 160.]

§ 8796. **Excepted Class of Employees—Necessary Extra Hours.**

The provisions of sections 8794 and 8795 shall not apply to, or prohibit engineers, rope-riders, motormen, cagers or others necessarily employed in transporting men in and out of the mine.

Provided, however, that all persons so employed shall not work more than ten (10) hours in any one calendar day: And, provided further, that this act shall not be construed to prohibit extra hours of employment underground necessitated by a weekly change of shift, or where rendered necessary by reason of making unavoidable repairs, or for the protection of human life. [L. '17, p. 170, § 161.]

§ 8797. **Enforcement.**

It shall be the duty of the mine inspector to enforce the provisions of this article. [L. '17, p. 170, § 162.]

ARTICLE XVI. GENERAL RULES.

§ 8798. Use and Storage of Oil and Grease in Mine.

It shall be unlawful to oil or grease any cars inside of any mine, unless the place where said oil or grease is used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point. Not more than one barrel of lubricating oil shall be permitted in any mine at one time, and it shall be kept in a fireproof building, cut out of solid rock, or made of masonry or concrete of sufficient thickness to insure safety in case of fire. [L. '17, p. 170, § 163.]

§ 8799. Explosive Oils.

No explosive oil shall be taken into or used in any mine for lighting purposes, except when used in safety lamps. Oil used for motor purposes shall be contained in metal tanks not to exceed ten (10) gallons, and if stored shall be put in a fireproof apartment, as provided in section 8798. [L. '17, p. 171, § 164.]

§ 8800. Prohibiting Employment of Women and Minors—Penalty for False Swearing as to Age.

No boy under sixteen (16) years of age, and no girl or woman of any age, shall be employed or permitted to be in any mine for the purpose of employment therein. No boy under the age of fourteen (14) years, and no girl or woman of any age, shall be employed or permitted to be in or about the surface workings of any mine for the purpose of employment: Provided, that this prohibition shall not affect the employment of boys or girls or women for clerical or messenger duty about the surface workings, as permitted under the school laws.

When an employer is in doubt as to the age of any boy applying for employment in or about the mine, he shall demand and receive proof of the age of such boy by certificate from the parents or guardian of such boy before he shall be employed. Said certificate shall consist of an affidavit, sworn and subscribed to before a justice of the peace or notary public, that he, the said boy, is of the prescribed age for employment.

Any person swearing falsely in regard to the age of a boy shall be guilty of perjury and shall be punished as provided in the statutes of the state. [L. '17, p. 171, § 165.]

§ 8801. Prohibiting Entrance of Danger Zone.

It shall be unlawful for any person except the mine officials, and in case of necessity such other persons as may be designated by them, to pass beyond any danger signal, or to enter any place which has been reported dangerous on bulletin-board, unless he be accompanied by a mine official. However, this does not apply to regular danger signals permanently posted above the mine. [L. '17, p. 171, § 166.]

§ 8802. Checking Miners Entering and Leaving.

No mine employee shall enter or leave a mine without indicating the fact of entering or leaving said mine by some suitable checking

system provided by and under the control of the operator. [L. '17, p. 172, § 167.]

§ 8803. Permissive Entry of Mine.

No unauthorized person shall enter the mine without permission from the superintendent or mine foreman. [L. '17, p. 172, § 168.]

§ 8804. Intoxicated Persons.

No person shall go into or around a mine, the buildings or machinery connected therewith, while under the influence of intoxicants. No person shall use, carry or have in his possession at, in, or around a mine, the buildings or the machinery connected therewith, any intoxicants. Any violation of this section will be a misdemeanor under this act. [L. '17, p. 172, § 169.]

§ 8805. Removing Pillars.

No person shall be employed to mine out pillars unless in company with one or more miners. [L. '17, p. 172, § 170.]

§ 8806. Examination of Working Places.

Every workman employed in the mine shall examine his working place before commencing work, and after any stoppage of work during the shift he shall repeat such examination. [L. '17, p. 172, § 171.]

§ 8807. Posting Employees as to Mining Rules.

Every workman, when first employed, shall have his attention directed by the mine foreman, or his assistant, to the general and special rules contained in this act. Said rules shall be posted at a conspicuous place at or near the main entrance to the mine. [L. '17, p. 172, § 172.]

§ 8808. Warning Foreman of Unsafe Conditions.

Employees shall notify the mine foreman, or the assistant mine foreman, of the unsafe condition of any working place, hauling roads or traveling ways, or of damage to doors, brattices or stoppings, or of obstructions in the air passages, when said conditions are known to them. [L. '17, p. 172, § 173.]

§ 8809. Prohibiting Traveling Slopes on Foot.

No person shall be allowed to travel on foot to and from his work on any hoisting slope, inclined plane, or locomotive road, unless no other roads are provided for that purpose, and then only at such times as permitted by the mine foreman. [L. '17, p. 172, § 174.]

§ 8810. Riding Cars or Cages.

No person shall ride upon or against any loaded car or cage in any shaft or slope in any mine. No person other than the trip rider shall be permitted to ride on empty trips on any slope, or inclined plane, except as provided for in other sections of this act. [L. '17, p. 173, § 175.]

§ 8811. Riding Full Cars.

No person other than the driver or trip rider, shall be allowed to ride on the full car, except mine officials and repair men. [L. '17, p. 173, § 176.]

§ 8812. Destroying Danger Signs, etc.

Any person who shall deface, pull down, or destroy any notice board, danger signal, general or special rules, record books or mining laws, shall be prosecuted by the mine inspector on notice given by the superintendent, or obtained from other sources, as provided for in section 8852 of article XVII. [L. '17, p. 173, § 177.]

§ 8813. Tampering With Wires.

All persons are forbidden to meddle or tamper in any way with any electric or signal wires, or any other equipment in or about the mine. [L. '17, p. 173, § 178.]

§ 8814. Quantity of Explosive Allowed in Mine.

No powder or high explosive shall be taken into the mine at any one time by any person in greater quantities than is required for use in one shift. [L. '17, p. 173, § 179.]

§ 8815. Storing and Handling Explosives.

No explosive shall be stored in any tippie or weighing office, and no naked lights shall be used while the attendant is weighing and giving out explosives. [L. '17, p. 173, § 180.]

§ 8816. Crowding on or off Cars.

Any person crowding or pushing to get on or off the cage or car shall be deemed guilty of a misdemeanor, and the mine inspector shall prosecute him in accordance with section 8852 of article XVII, when the matter is reported to him by the superintendent. [L. '17, p. 173, § 181.]

§ 8817. Entrusting Safety Lamps to Workmen.

No safety lamp shall be entrusted to any person for use in a mine, until said person has given satisfactory evidence to the foreman that he understands the proper use thereof, and the danger of tampering with the same. [L. '17, p. 173, § 182.]

§ 8818. Possession of Keys for Unlocking Safety Lamps.

No one, except a person duly authorized by this act, shall have in his possession a key or other instrument for the purpose of unlocking any safety lamp in any mine where locked safety lamps are used. Other persons than those duly authorized by this act, having keys or other instruments for the opening of safety lamps, shall be prosecuted by the state mine inspector. [L. '17, p. 173, § 183.]

§ 8819. Brushing Gas Prohibited.

Any accumulation of gas in a mine shall not be removed by brushing. [L. '17, p. 174, § 184.]

§ 8820. Gas Ignited by Blast—Leaving Gas-blowers Burning.

When gas is ignited by a blast, or otherwise, the person having charge of the place where the said gas is ignited, shall immediately extinguish it, if possible, and if unable to do so, he shall immediately notify the mine foreman, or the assistant mine foreman, of the fact. Miners must see that no gas-blowers are left burning upon leaving their working places. It shall be the duty of the superintendent to notify the mine inspector of any violation of this rule, and the inspector shall then prosecute as provided for in section 8852 of article XVII. [L. '17, p. 174, § 185.]

§ 8821. Warning of Shot-firings.

When a shot-firer is about to fire a blast where the miners are not present, he shall be careful to notify all persons who may be endangered thereby, and shall give sufficient alarm so that any person approaching may be warned of the danger. [L. '17, p. 174, § 186.]

§ 8822. Notice of Driving Crosscut.

In driving crosscuts through pillars, before firing a blast, the miner must notify in person the workmen in the place toward which he is driving, so that they may find a place of safety. He shall also guard the passages on either side of his place at every shot, so that no person may come unawares upon it. [L. '17, p. 174, § 187.]

§ 8823. Care in Handling Explosives.

Whenever a miner or shot-firer shall open a box containing powder or other explosives, or while in any manner handling the same, he shall first place his lamp, if open, not less than five (5) feet from such explosive and in such a position that the air current cannot convey sparks to the explosive, and he shall not smoke while handling explosives. [L. '17, p. 174, § 188.]

§ 8824. Tamping Bars for Blasting.

In charging and tamping a hole for blasting, no person shall use any iron or steel needle. The tamping bar for high explosives shall be made of wood. For black powder iron tamping bars must be tipped with copper at least five (5) inches in length. [L. '17, p. 174, § 189.]

§ 8825. Blasting Holes.

No explosive shall be forcibly pressed into a hole that is of insufficient size, and when a hole has been charged the explosive shall not be taken out, and no hole shall be bored for blasting at a distance of less than twelve (12) inches from any hole where the charge has misfired, and no hole for blasting shall be drilled more than six (6) feet deep. [L. '17, p. 175, § 190.]

§ 8826. Tamping Material in Gaseous or Dusty Mines.

In gaseous or dusty mines, shot-firers or other persons charging holes for blasting, shall use incombustible material for tamping. All holes before being fired shall be solidly tamped the full length of the hole.

Any person who violates this rule shall be guilty of a misdemeanor. [L. '17, p. 175, § 191.]

§ 8827. Fencing Abandoned Openings.

Every abandoned slope, shaft, airhole or drift, shall, when so abandoned, be properly fenced around or across its whole entrance. [L. '17, p. 175, § 192.]

§ 8828. Entered Only by Traveling Way.

No person shall go into an old or abandoned portion of any mine, or into any other place that is not in actual course of working, without permission from a mine official, and no person shall travel to and from his work except by the traveling way assigned for that purpose. It shall be the duty of the mine inspector to prosecute all persons who violate this rule, in accordance with section 8852 of article XVII. [L. '17, p. 175, § 193.]

§ 8829. Nuisances in Airways Prohibited.

Workmen and all other persons are expressly forbidden to commit any nuisance, or throw into, deposit or leave coal or dirt, stones or other rubbish in the airway or road to interfere with, pollute or hinder the air passing into and through the mine. [L. '17, p. 175, § 194.]

§ 8830. Posting Signal Code.

In all shafts and slopes where persons, coal and other materials are hoisted by machinery, the code of signals shall be posted. [L. '17, p. 175, § 195.]

§ 8831. Prohibition Against Smokers' Articles.

No person shall carry any matches, pipes or other smokers' articles into a mine, or portion of a mine worked with safety lamps, nor shall he have any of said articles in his possession while in such a mine. [L. '17, p. 175, § 196.]

§ 8832. Prompt Treatment of Injured.

If any person shall receive any injury in or about the mine requiring surgical or medical treatment, and same is reported to the mine foreman, he shall see that said injured person receives such treatment immediately. [L. '17, p. 176, § 197.]

§ 8833. Contravening Rules.

Every person who contravenes or does not comply with any of the special or general rules in this act shall be deemed guilty of a misdemeanor. [L. '17, p. 176, § 198.]

§ 8834. Dead Line in Shafts or Slopes.

At the foot of any shaft or slope, or at any intermediate lift from which men and coal are regularly hoisted, the operator or superintendent or foreman shall designate a dead line beyond which men shall not pass in order to be hoisted out of the shaft or slope, until they are notified

by the cager or foreman in charge of said place. Failure to recognize this rule shall be a misdemeanor under this act. [L. '17, p. 176, § 199.]

§ 8835. Rules to be Printed in English.

Copies of these rules shall be printed in English, by the operator, and each workman in and around the mine shall procure a copy. If he cannot read the English language, he must at his own expense, procure an interpreter to correctly interpret the rules to him. The workman will pay the operator twenty-five (25c) per copy for the rules, and if he returns the same to the operator in legible condition, the amount so paid by him shall be returned. [L. '19, p. 707, § 6; L. '17, p. 176, § 200.]

§ 8836. Identifying Checks of Miners.

It shall be unlawful to change, exchange, substitute, alter or move any number or check or other device or sign used to indicate or identify the person or persons to whom credit or pay is due for the mining or loading of coal in any car or appliance containing the same; and it shall be unlawful for any person to place any number, check, device or sign upon any car or other appliance loaded by any other person in or about the mine. Any violation of this provision shall be deemed a misdemeanor under this act. [L. '17, p. 176, § 201.]

§ 8837. Prosecutions.

The state mine inspector shall prosecute all violators of the mining law. [L. '17, p. 177, § 202.]

§ 8838. Cleared Space Around Air-shafts.

All surface timber, brush and other inflammable material must be kept cleared for a distance of one hundred (100) feet on all sides of the air-shafts and escapement ways: Provided, that this regulation shall not apply to a reasonable amount of cut timber kept on hand for immediate use underground. [L. '17, p. 177, § 203.]

§ 8839. Weighing Coal and Posting Miner's Record—Check Weighman—Oath.

(a) The operator of every coal mine where the miners are paid by the weight of their output, shall provide at such mine suitable and accurate scales for the weighing of such coal, and a correct record shall be kept of all coal so weighed, and each day's record shall be posted where it is open at all hours to the inspection of miners. Sufficient weights shall be furnished by the operator for the purpose of testing the accuracy of said scales: Provided, however, that where a check weighman is employed the operator shall not be required to post each day's record.

(b) The miners employed by or engaged in working at any coal mine in this state shall have the privilege, if they desire, of employing at their expense a check weighman, who shall have like rights, powers and privileges in the weighing of coal as the regular weighman, and be subject to the same oath and penalties as the regular weighman. Said oath or affirmation shall be conspicuously posted in the weigh office.

(c) The weighman employed at any mine shall subscribe an oath or affirmation before a justice of the peace, or other officer authorized to administer oaths, in form as follows, to wit:

(Date) —.

I, —, depose and say that I will do justice, as weighman, between the employer and employee, and weigh correctly the output of coal from the mine or mines, and keep an accurate record thereof, posting a daily bulletin of such weights for the examination of the employee.

(Sign here) — —.

Sworn to and subscribed before me, a — on the day and date above written.

(d) Any weigher of coal, or any person so employed, who shall knowingly violate any of the provisions of this and the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100) for each offense, or by imprisonment in the county jail for a period not to exceed thirty (30) days, or by both such fine and imprisonment, proceedings to be instituted in any court having jurisdiction therein. [L. '17, p. 177, § 204.]

§ 8840. Returning to Missed Shots.

No person shall return to a missed shot, if lighted with a squib, until twenty (20) minutes have elapsed from the time of lighting same, or, if lighted with a fuse, until eight (8) hours have elapsed; and no person shall return to a missed shot when the firing is done by electricity unless the wires are disconnected from the battery. [L. '17, p. 178, 205.]

§ 8841. Receiving or Offering Bribe to Procure Employment.

Any mine superintendent, mine foreman, or other person or persons who shall receive or solicit any sum of money or other valuable consideration, from any person for the purpose of continuing in his or their employ, or for the purpose of procuring employment, shall be guilty of a misdemeanor. Any person offering any mine superintendent, or mine foreman, any sum of money or any other valuable consideration as a bribe for the purpose of obtaining employment or retaining employment, shall be guilty of a misdemeanor, and in either case of superintendent, mine foreman, or other person, upon conviction they shall be subject to a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment in the county jail for a period not to exceed six (6) months, or by both such fine and imprisonment, proceedings to be instituted in any court having jurisdiction thereof. [L. '17, p. 178, § 206.]

§ 8842. Miner to Examine Safety of Working Place—Safety Rules.

The miner shall examine his working place before beginning work, and take down all dangerous slate, or otherwise make it safe by properly timbering it, before commencing to mine or load coal. He shall examine his place to see whether the fire boss has left the date marks indicating

his examination thereof, and if said marks cannot be found it shall be the duty of the miner to notify the mine foreman, or the assistant mine foreman, of the fact immediately. The miner shall at all times be careful to keep his working place in a safe condition.

Should he at any time find his place becoming dangerous from gas or from roof or from any unusual condition that may arise, he shall at once cease working and inform the mine foreman, or the assistant mine foreman, of said danger, but before leaving his place he shall put some plain warning across the entrance thereto to warn others against entering into danger.

After each blast he shall exercise care in examining the roof and coal, and shall secure them safely before beginning work.

He shall order all props, cap pieces, and all other timbers necessary at least one day in advance of needing them, or as provided for in the rules of the mine. If he fails to receive said timbers and finds his place unsafe, he shall vacate it until the necessary timbers are supplied.

The management of any mine may submit to the mine inspector, for his approval, uniform rules for timbering at mines where conditions may be favorable for same. If approved by the mine inspector, they will become a part of the rules of said mine.

Under no condition shall the miner use coal dust or other combustible material for tamping in any gaseous or dusty mines.

When places are liable to generate sudden outbursts of explosive gas, no miner shall be allowed to charge or fire shots except under the supervision and with the consent of the mine foreman, or the assistant mine foreman, or some other competent person designated by the mine foreman for that purpose.

The miner shall remain during working hours in the place assigned to him, and he shall not leave his working place without the consent of the mine foreman, assistant mine foreman, or fire boss, unless called upon to assist others, or in case of need. He shall not wander about the hauling roads or enter abandoned or idle workings. [L. '17, p. 179, § 207.]

§ 8843. Duties of Driver.

When a driver has occasion to leave his trip, he must be careful to see that it is left, when possible, in a safe place secure from cars and other dangers, and where it will not endanger the drivers of other trips or other persons.

He must take care while making his trip downgrade to have the brakes or sprags so adjusted that he can keep the cars under control and prevent them from running over himself or others.

He shall not leave any cars standing where they may materially obstruct the ventilating current, except in case of accident, which he shall promptly report to the mine foreman, or assistant mine foreman.

He shall not allow any person to ride on loaded mine cars. He shall not allow any person to drive his horses or mules in his stead, unless authorized by a mine official. When it is his duty to open a door for the purpose of passing his trip through he shall see that the door is immediately closed thereafter. [L. '17, p. 180, § 208.]

§ 8844. Duties of a Trip-rider.

The trip-rider shall exercise care in seeing that all hitchings are safe for use and that all the trip is coupled before starting, and should he at any time see any material defect in the rope, link or chain, he shall immediately remedy said defect, or, if he is unable to do so, he shall detain the trip and report the matter to the mine foreman or the assistant mine foreman. He shall not allow any person to ride on the loaded or empty trip, except as provided in article XVI, section 8811. [L. '17, p. 180, § 209.]

§ 8845. Duties of Hoisting Engineers.

It shall be the duty of the engineer, who shall be a temperate competent person, to keep a careful watch over his engine and all machinery under his charge. He shall make himself acquainted with the signal codes provided for in this act, and by the special rules of the mine.

He shall not allow any unauthorized person to enter the engine-house, nor shall he allow any person to handle or run the engine without the permission of the superintendent.

When workmen are being lowered or raised he shall take special precautions to keep the engine well under control. [L. '17, p. 181, § 210.]

§ 8846. Duties of Motorman and Locomotive Engineer.

The motorman or locomotive engineer shall keep a sharp lookout ahead, and sound the whistle or alarm bell frequently when coming near the parting switches or landings, and shall not exceed the limit allowed by the mine foreman. He shall see that the motors, cables and controlling parts are kept clean and in safe operating condition, and that the headlight is burning properly when the locomotive is in motion. He shall not allow any person, except his attendant, or mine officials, to ride on the locomotive or motor. [L. '17, p. 181, § 211.]

§ 8847. Duties of Fireman.

Every fireman in charge of a boiler or boilers for the generation of steam shall keep a careful watch over same. He shall see that the steam pressure does not at any time exceed the limit allowed by the superintendent or master mechanic; he shall frequently try the safety valves, and shall not increase the weight on the same. He shall maintain a proper height of water in each boiler, and if anything should happen to prevent this he shall report it without delay to the superintendent or master mechanic, or other person designated by the superintendent, and take such other action as may under the circumstances be best for the protection of life and preservation of property. [L. '17, p. 181, § 212.]

§ 8848. Fan Operator's Duties.

The person in charge of the ventilating fan at a mine shall keep it running at such speed as the mine foreman shall direct in writing. He shall report promptly to the mine foreman, or assistant mine foreman, in case of accident to boiler or fan machinery. If only ordinary repairs to the fan or machinery become necessary, he shall await the instructions of the mine foreman or assistant mine foreman before stopping the fan.

Should it become impossible to run the fan, or become necessary to stop it to prevent its destruction, he shall at once notify the superintendent or mine foreman, who shall give immediate warning to the persons in the mine. [L. '17, p. 182, § 213.]

§ 8849. Hooker-on's Duties.

The hooker-on at the bottom of any slope shall be over eighteen years of age, and he shall be careful to see that the cars are properly coupled to a rope or chain, and to each other, and the safety device is properly attached to man trips, before signaling the engineer. He shall personally attend to the signals, and see that the provisions of this act in respect to hoisting and lowering persons in shafts or slopes are complied with. [L. '17, p. 182, § 214.]

§ 8850. Duties of Cager.

The cager at the bottom of any shaft shall be over eighteen years of age. He shall not attempt to withdraw the car until the cage comes to a rest, and when putting the full car on the cage, he must be careful to see that the springs or catches are properly adjusted to keep the car in place before signaling the engineer. He shall personally attend the signals and see that the provisions of this act in respect to hoisting and lowering persons in shafts or slopes are complied with. [L. '17, p. 182, § 215.]

§ 8851. Duties of Topman and Slope Topman.

(a) The topman of a shaft shall not allow any tools to be placed on the same cage with persons, or on either cage when persons are being lowered into the mine, except for the purpose of repairing the shaft or the machinery therein. The men shall place their tools in cars provided for that purpose, which cars shall be lowered before or after the men have been lowered. He shall also see that no driver or other person descends the shaft with any horse or mule, unless the said horse or mule is secured in a suitable box or safely penned, and only the driver in charge of said horse or mule shall accompany it in any cage. The topman of a shaft shall see that the springs or keeps for the cage to rest upon are kept in good working order, and when taking the full car off he must be careful that no coal or other material is allowed to fall down the shaft.

(b) The topman of a slope or inclined plane shall see that the safety device is closed at all times, except when cars or trips are passing, and in no case shall said safety device be withdrawn until the cars are coupled to the rope or chain and the proper signal given. He shall carefully inspect each day the rope and chain used for hoisting or lowering men or coal, and shall promptly report to the superintendent any defect discovered, and shall use care in attaching securely the cars to the rope. He shall ring the alarm bell in case of accident.

(c) It shall be the duty of all topmen to report to the superintendent any violation of section 8823 of article XVI.

(d) Nothing herein shall be construed to prevent the owner or operator of a coal mine from enforcing any rules or regulations now in effect, or that may be later adopted, which do not conflict with the provisions of this act. [L. '17, p. 182, § 216.]

ARTICLE XVII. OFFENSES AND PENALTIES.

§ 8852. Interference with Appliances or Employees.

Any miner, workman, or other person, who shall knowingly injure any water-gauge, barometer, air course or brattice, or shall obstruct or throw open any airway, or shall handle or disturb any part of the machinery of the hoisting engine, or open a door in the mine and not have the same closed again, whereby danger is produced either to the mine or to those that work therein, or who shall enter into any part of the mine against caution, or who shall interfere with or intimidate any engineer, fireman, or other employee in or about such mine in the discharge of his duties or the performance of his labor, or who shall disobey any order given in pursuance of this act, or violate any of the provisions established by this act, for which the penalty is not otherwise provided, and who shall do any act whereby the lives and health of persons working in the mine, or the security of the mine or mines or the machinery thereof is endangered, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars (\$200) nor less than fifty dollars (\$50), or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. [L. '17, p. 183, § 217.]

ARTICLE XVIII.

§ 8853. Repealing Clause.

All acts or parts of acts relating to coal mining in the state of Washington, or to the mine inspector of the state of Washington, be, and the same are hereby repealed. [L. '17, p. 184, § 218.]

§ 8854. Partial Invalidity of Act.

If it shall be adjudicated that any section or part of a section of this act shall be unconstitutional and invalid for any reason, an adjudication of invalidity of said section or part of a section shall not affect the validity of the act as a whole, or any part thereof. [L. '17, p. 184, § 219.]

§ 8855. Time Allowed for Conforming to Act.

Every operator of a mine affected by this act shall be given six (6) months after this act takes effect to make any necessary changes or secure any materials or supplies to comply with the provisions of this act. [L. '17, p. 184, § 220.]

§ 8856. Coal Mine—What Constitutes—Inspection of Work on Prospects.

No coal mine shall be considered a mine for the purpose of this act unless five men or more are employed underground on one shift, nor shall mines employing less than ten men be subject to the provisions of this act, except that the inspector of mines shall have the right to enter any of the places where men are at work within such prospect, and if the conditions therein are dangerous to life, the inspector may, and it shall be his duty to stop work on such prospect until such dangerous place is rendered safe, or the same be placed in control of a certified mine fore-

man: Provided, that all such operators of prospects and places herein in this section referred to shall make reports to the state mine inspector as are required to be made by other mines and mine operators under the provisions of this act. [L. '17, p. 184, § 221.]

See notes to § 8637.

CHAPTER IV.

PROTECTION AGAINST OPEN SHAFTS.

§ 8857. [7408.] Shafts, Holes, etc., in the Ground shall be Fenced.

Any person or persons, company or corporation, who shall hereafter dig, sink, or excavate, or cause the same to be done, or being the owner or owners, or in the possession under any lease or contract, of any shaft, excavation, or hole, whether used for mining or otherwise, or whether dug, sunk, or excavated for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking, or excavating, or after they have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences or other safeguards, and keep the same in good repair around such works or shafts sufficient to securely guard against danger to persons and animals from falling into such shafts or excavations. [L. '90, p. 121, § 1; 1 H. C., § 2263.]

Cited in 110 Wash. 139.

This section to be strictly construed, and does not apply to a case where a boy voluntarily entered a shaft, the door

of which was left open: *Dernac v. Pacific Coast Coal Co.*, 110 Wash. 138, 188 Pac. 15.

§ 8858. [7409.] Complaint as to Dangerous Excavation—When and by Whom Filed.

Three persons being residents of the county, and knowing or having reason to believe that the provisions of the last preceding section are being or have been violated within such county, may file a notice with any justice of the peace or police judge therein, which notice shall be in writing, and shall state—

1. The location, as near as may be, of the hole, excavation, or shaft;
2. That the same is dangerous to persons or animals, and has been left or is being worked contrary to the provisions of this chapter;
3. The name of the person or persons, company or corporation, who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein;
4. If abandoned and no claimant; and
5. The estimated cost of fencing or otherwise securing the same against any avoidable accidents. [L. '90, p. 121, § 2; 1 H. C., § 2264.]

§ 8859. [7410.] Justice shall Issue Order to Sheriff, etc., upon Filing of Notice.

Upon the filing of the notice as provided in the preceding section, the justice of the peace or judge of the police court shall issue an order, directed to the sheriff of the county or to any constable or city marshal therein, directing such officer to serve a notice in manner and form as is prescribed by law for service of summons upon any person or persons, or

the authorized agent or agents of any company or corporation named in the notice on file, as provided in the last section. [L. '90, p. 121, § 3; 1 H. C., § 2265.]

§ 8860. [7411.] Notice, What to Contain—Liability.

The notice thus served shall require the said persons to appear before the justice or judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show to the satisfaction of the court that the provisions of this chapter have been complied with; or if he or they fail to appear, judgment will be entered against him or them for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this chapter, which judgments and fines shall be adjudged and collected as provided for by law. [L. '90, p. 122, § 4; 1 H. C., § 2266.]

§ 8861. [7412.] Suits shall be in Name of State—Disposition of Fines.

Suits commenced under the provisions of this chapter shall be in the name of the state of Washington, and all judgments and fines collected shall be paid into the county treasury for county purposes. [L. '90, p. 122, § 5; 1 H. C., § 2267.]

§ 8862. [7413.] Guards to Prevent Accidents.

If the notice filed with the justice of the peace or police judge, as aforesaid, shall state that the excavation, shaft, or hole has been abandoned, and no person claims the ownership thereof, said justice of the peace or judge shall notify the board of county commissioners of the county, or either of them, of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced or otherwise guarded as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid as other county expenses: Provided, that nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence, or otherwise guard any shaft, excavation, or hole, unless in their discretion the same may be considered dangerous to persons or animals. [L. '90, p. 122, § 6; 1 H. C., § 2268.]

§ 8863. [7414.] Safety Cage in Mining Shafts—Regulations.

It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the said shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs, or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet aforesaid shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and

shall cover the top of said cage in such manner as to afford the greatest protection to life and limb from any matter falling down said shaft. [L. '90, p. 123, § 7; 1 H. C., § 2269.]

§ 8864. [7415.] Penalty for Noncompliance.

Any person or persons, company or companies, corporation or corporations, who shall neglect, fail, or refuse to comply with the provisions of the last preceding section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars. [L. '90, p. 123, § 8; 1 H. C., § 2270.]

§ 8865. [7416.] Right to Damages not Affected by This Chapter.

Nothing contained in this chapter shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his heirs or administrator or administratrix, or anyone else now competent to sue in an action of such character. [L. '90, p. 123, § 9; 1 H. C., § 2271.]

CHAPTER V.

PROSPECTING FOR MINERAL DEPOSITS BY COUNTIES.

§ 8866. [7417.] Boring for Valuable Minerals—Voting Tax for.

Whenever twenty taxpayers of any one county, who shall reach [each] pay taxes on a sum not less than fifteen hundred dollars in said county, shall apply, by petition in writing, to the commissioners of their county for an appropriation of any specified sum of money for the purpose of boring or drilling into the earth for valuable minerals, such as coal, oil, gas, salt, or any other valuable subterranean production that is supposed to exist in quantities sufficient to justify boring for, then the county commissioners of the county wherein the above-named petition has been filed, shall make an estimate of the probable depth the well will have to be bored, and the probable cost of boring the same, and shall put up notices, as prescribed by law for general elections, calling on all legal voters in the said county to vote for or against the said tax. [L. '88, p. 126, § 1; 1 H. C., § 2246.]

§ 8867. [7418.] Election Notices, What to Contain.

Said election notices shall fully set forth the object of the election, the amount of taxes to be raised, the purpose for which it is to be expended, and the locality where the well is to be drilled or bored. [L. '88, p. 127, § 2; 1 H. C., § 2247.]

§ 8868. [7419.] No Money Expended Except on Land to Which County has Title.

The county shall expend no money for the purposes hereinbefore named, on land which it does not have a title to, or a twenty years' lease of. [L. '88, p. 127, § 3; 1 H. C., § 2248.]

§ 8869. [7420.] Form and Quantity of Land Required.

The tract of land so leased or owned by the county shall be nearly square in form, and not contain less than ten acres. [L. '88, p. 127, § 4; 1 H. C., § 2249.]

§ 8870. [7421.] Well to be Bored Near Center.

Said well shall be bored or drilled near the center of said tract of land. [L. '88, p. 127, § 5; 1 H. C., § 2250.]

§ 8871. [7422.] Board to Select Site Where Two or More Petitions Presented.

If there are lawful petitions for boring more than one well in the same county at the same time, the county commissioners shall select the site for boring or drilling the said well. [L. '88, p. 127, § 6; 1 H. C., § 2251.]

§ 8872. [7423.] Qualifications of Electors.

No person shall be a voter on the question of levying a tax for the purpose herein named, except he shall have paid taxes in said county the preceding year. [L. '88, p. 127, § 7; 1 H. C., § 2252.]

§ 8873. [7424.] Ballots, What shall Contain.

The ballots shall read "Tax—yes," or "Tax—no." [L. '88, p. 127, § 8; 1 H. C., § 2253.]

§ 8874. [7425.] Estimate for Boring—Fifteen Per Cent Added.

In making an estimate of the expenses of boring the said well, the county commissioners may add fifteen per cent thereto for delinquency, and the expenses of collecting the same. [L. '88, p. 127, § 9; 1 H. C., § 2254.]

§ 8875. [7426.] Collection of Tax—How Paid Out.

This tax shall be collected the same as the school tax, and be payable on the order of a majority of the board of county commissioners. [L. '88, p. 127, § 10; 1 H. C., § 2255.]

§ 8876. [7427.] To Advertise for Drilling—How, and for How Long.

When the tax shall have been voted and collected, the county commissioners shall advertise in the newspapers in said county having the largest circulation, for at least four consecutive weeks, for boring or drilling said well, and in case no newspaper is in said county, the advertisement may be published in the nearest newspaper thereto. [L. '88, p. 127, § 11; 1 H. C., § 2256.]

§ 8877. [7428.] Contract Let to Lowest Bidder.

When the bids shall be opened and it shall appear to a majority of the board of county commissioners that any of them are reasonable, then they shall proceed to let the contract to the lowest bidder therefor. [L. '88, p. 127, § 12; 1 H. C., § 2257.]

§ 8878. [7429.] Contractor's Bond—Condition of.

The commissioners aforesaid shall require a good and sufficient bond of the contractor for the faithful performance of his contract. [L. '88, p. 127, § 13; 1 H. C., § 2258.]

§ 8879. [7430.] Sale of Well—Proceeds, How Disposed of.

When the well has been drilled or bored as per contract, then within one year thereafter the county commissioners, after duly advertising, may proceed to sell their title to the land, with the appurtenances thereto belonging, to the highest bidder, and shall place the proceeds of said sale into the county general fund. [L. '88, p. 128, § 14; 1 H. C., § 2259.]

§ 8880. [7431.] Surplus Fund, How Disposed of—Deficiency, How Supplied.

If the expense of boring or drilling said well shall be less than the estimated cost, then the county commissioners shall put the surplus fund that was collected therefor into the county general fund; and if the expense shall exceed their estimates by an amount not greater than one thousand dollars, then and in that case the commissioners aforesaid may draw upon the county general fund for a sum not greater than last named. [L. '88, p. 128, § 15; 1 H. C., § 2260.]

§ 8881. [7432.] Expense of Election Paid Out of General Fund.

All of the expenses of the election hereinbefore provided for shall be paid out of the county general fund. [L. '88, p. 128, § 16; 1 H. C., § 2261.]

§ 8882. [7433.] Elections Limited—How Often may Occur.

It is further provided by this chapter that no election for the purposes hereinbefore set forth shall occur oftener than once in two years in any one county. [L. '88, p. 128, § 17; 1 H. C., § 2262.]

Morgues. See "Health," § 6040.

Morrill Act. See "Education," § 4584.

Mortgages. See "Real Property," § 10550; "Chattel Mortgages and Conditional Sales," § 3779.

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MUNICIPAL CORPORATIONS.

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MUNICIPAL CORPORATIONS.

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CHAPTER I.

INCORPORATION.

§ 8883. [7434.] City or Town may Incorporate.

Any portion of a county containing not less than three hundred inhabitants, and not incorporated as a municipal corporation, may become incorporated under the provisions of this act, and when so incorporated, shall have the powers conferred, or that may hereafter be conferred, by law upon municipal corporations of the class to which the same may belong: Provided, that nothing herein contained shall prevent the reincorporation of towns and villages under the provisions of this act, whatever their population, heretofore incorporated or intended so to be, under the provisions of the act approved February 2, 1888, entitled "An act for the incorporation of towns and villages in the territory of Washington," and said reincorporation shall be construed as a full acceptance of all the terms and conditions imposed by this act. [L. '90, p. 131, § 1; 1 H. C., § 493.]

For former statutes on the subject of the incorporation of cities, see L. '71, pp. 51—58; L. '77, pp. 173—198. Rep. by L. '81, pp. 22, 23; see also, L. '88, pp. 221—232.

"This act" is the act of March 27, 1890, except as modified by subsequent legislation, and is embraced in §§ 8883—8947, 9163—9194 of this title. The words "act" or "chapter" of original law have been retained throughout these sections to prevent confusion and misinterpretation.

Cited in 1 Wash. 288—290, 292, 294, 295; 2 Wash. 143—145; 4 Wash. 92, 95, 128, 419; 8 Wash. 669, 672; 9 Wash. 680; 15 Wash. 409; 28 Wash. 723; 44 Wash. 92; 105 Wash. 96.

Nature and Status, Power to Create and Constitutional Provisions: See Remington's Digest, Mun. Corp., §§ 1—3, and cases cited.

Validity of Incorporation: See Remington's Digest, Mun. Corp., § 8, and cases cited.

See, also, State ex rel. Cummings v. Johnson, 105 Wash. 93, 177 Pac. 699.

Effect of General Laws on Existing Corporations: See Remington's Digest, Mun. Corp., § 9, and cases cited.

§ 8884. [7435.] Proceedings to Incorporate.

A petition shall first be presented to the board of county commissioners of such county, signed by at least sixty qualified electors of the county, residents within the limits of such proposed corporation, which petition shall set forth and particularly describe the proposed boundaries of such corporation, and state the number of inhabitants therein as nearly

as may be, and shall pray that the same may be incorporated under the provisions of this act. Such petition shall be presented at a regular or special meeting of such board, and shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in such county, together with a notice stating the time of the meeting at which the same will be presented: Provided, that if the number of inhabitants contained within such proposed corporation shall be or exceed fifteen hundred, the chairman of the board of commissioners, if not in regular session, shall call a special session of the board within five days. When such petition is presented, the board of county commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding two months in all; and, on the final hearing, shall make such changes in the proposed boundaries as they may find to be proper, and shall establish and define such boundaries, and shall ascertain and determine how many inhabitants reside within such boundaries: Provided, that any changes made by said board of county commissioners shall not include any territory outside the boundaries described in such petition. They shall then give notice of an election to be held in such proposed corporation for the purpose of determining whether the same shall become incorporated. Such notice shall particularly describe the boundaries so established, and shall state the name of such proposed corporation, and the number of inhabitants so ascertained to reside therein, and the same shall be published, for at least two weeks prior to such election, in a newspaper printed and published within such boundaries, or posted, for the same period, in at least four public places therein. Such notice shall require the voters to cast ballots, which shall contain the words "For incorporation," or "Against incorporation," or words equivalent thereto; and also the names of persons voted for to fill the various elective municipal offices prescribed by law for municipal corporations of the class to which such proposed corporation will belong. [L. '90, p. 131, § 2; 1 H. C., § 494.]

"This act": See note to § 8883.

Cited in 1 Wash. 288—290; 26 Wash. 187; 105 Wash. 95, 96.

In General: See Remington's Digest, Mun. Corp., §§ 1—9, and cases cited.

This section giving the county commissioners the power to ascertain and

determine the number of inhabitants within the boundaries of a proposed town, their decision is conclusive, unless reviewed under the appeal statute, section 4076: State ex rel. Cummings v. Johnson, 105 Wash. 93, 177 Pac. 699.

§ 8885. [7436.] Election, How Conducted—Order Declaring Incorporation.

Such election shall be conducted in accordance with the general election laws of the state, and no person shall be entitled to vote thereat unless he shall be a qualified elector of the county, and shall have resided within the limits of such proposed corporation for at least thirty days next preceding such election. The board of county commissioners shall meet on the Monday next succeeding such election, and proceed to canvass the votes cast thereat; and if, upon such canvass, it appear that a majority of the votes cast are for incorporation, the board shall, by an order entered upon their minutes, declare such territory duly incorporated as a municipal incorporation of the class to which the same shall belong,

under the name and style of the city (or town, as the case may be) of — (naming it), and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. Said board shall cause a copy of such order, duly certified, to be filed in the office of the secretary of state, and from and after the date of such filing such incorporation shall be deemed complete, and such officers shall be entitled to enter immediately upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, only until the next general municipal election to be held in such city or town, and until their successors are elected and qualified. [L. '90, p. 133, § 3; 1 H. C., § 495.]

Cited in 1 Wash. 288—290; 4 Wash. 303.

In General: See Remington's Digest, Mun. Corp., § 14, and cases cited.

§ 8886. [7437.] Proceedings to Reincorporate.

The city council or other legislative body of any city or town, organized or incorporated prior to the passage of this act, shall, upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors of such city or town, as shown by the vote cast at the last municipal election held therein, submit to the electors of such city or town, at the next general or special election called for to be held therein, the question whether such city or town shall become organized under the general laws of the state relating to municipal corporations of the class to which such city or town may belong. Notice that such question shall be so submitted shall be given by publication in a newspaper printed and published in such city or town; or if there be no newspaper printed and published therein, by printing and posting the same in at least four public places therein, including the place or places where such election is to be held. Such notice shall be so published or posted for at least two weeks prior to such election, and shall also be made a part of the general election notice. Such notice shall distinctly state the proposition to be so submitted, and shall designate the class to which such corporation belongs, and shall invite the electors thereof to vote upon such proposition by placing "X" upon their ballots, opposite the words "For reorganization" or "Against reorganization." Which words, or the equivalent thereto, shall be printed upon the ballots in such manner that the voters' choice may be clearly indicated by marking as above specified. The votes so cast shall be canvassed at the time and in the manner in which the other votes cast at such election are canvassed. If upon such canvass a majority of all the electors voting at such election shall be found to have voted for such reorganization, the said council or other legislative body shall, by an order entered upon their minutes, cause their clerk, or other officer performing the duties of clerk to make and transmit to the secretary of state a certified abstract of such vote, which abstract shall show the whole number of electors voting at such election, the number of votes cast for reorganization, and the number of votes against reorganization. Said council or other legislative body shall immediately thereafter call a special election for the election of officers required by law to be elected in corporations of the class to which such city or town shall belong, which election shall be held within three months thereafter. Such election shall

be held in all respects in the manner prescribed, or that may hereafter be prescribed, by law for municipal elections in corporations of such class, and shall be canvassed by the council or other legislative body calling the same, who shall immediately declare the result thereof, and cause the same to be entered upon their journal. From and after the date of such entry, such corporation shall be deemed to be organized under such general laws, under the name and style of the city (or town, as the case may be) of — (naming it), with the powers conferred, or that may hereafter be conferred, by law upon municipal corporations of the class to which the same may belong; and the officers elected at such election shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, only until the next general municipal election to be held in such city or town, and until their successors are elected and qualified. [L. '09, p. 647, § 1. Cf. L. '90, p. 133, § 4; 1 H. C., § 496.]

"This act": See note to § 8883.

Cited in 1 Wash. 288, 289; 4 Wash. 131; 7 Wash. 197, 229; 8 Wash. 520; 15 Wash. 193, 574; 16 Wash. 419; 42 Wash. 411.

§ 8887. [7438.] Effect of Reincorporation.

Any city or town organized under the provisions of the last preceding section shall, for all purposes, be deemed and taken to be in law the identical corporation theretofore incorporated and existing, and such reorganization shall in no wise affect or impair the title to any property owned or held by such corporation, or in trust therefor, or any debts demands, liabilities, or obligations existing in favor of or against such corporation, or any proceeding then pending; nor shall the same operate to repeal or affect, in any manner, any ordinance theretofore passed or adopted and remaining unrepealed, or to discharge any person from any liability, civil or criminal, then existing, for any violation of such ordinance, but such ordinances, so far as the same are not in conflict with such general laws, shall be and remain in force until repealed or amended by competent authority: Provided, that proceedings theretofore commenced shall, after such reorganization, be conducted in accordance with the provisions of such general laws. [L. '90, p. 135, § 5; 1 H. C., § 497.]

Cited in 1 Wash. 288, 289; 3 Wash. 11; 15 Wash. 574; 28 Wash. 541.

Adjustment of Pre-existing Rights and Liabilities: See Remington's Digest, Mun. Corp., § 16; De Mattos v. New Whatcom, 4 Wash. 127, 29 Pac. 933; Potter v. Black, 15 Wash. 186, 45 Pac. 787; Holcomb v. Estate of Johnson, 43 Wash. 362, 86 Pac. 409; Fisher v. Seattle, 55 Wash. 396, 104 Pac. 655.

Where a city was entitled under its special charter to have a lien upon real property, until taxes assessed thereon should be paid, with power to enforce collection by summary process, it did not lose such rights by reincorporating, in view of this section, providing that such reorganization should in no wise affect or impair the city's title to any demands,

liabilities or obligations existing in its favor: Port Townsend v. Eisenbeis, 28 Wash. 533, 68 Pac. 1045.

Where a municipality, organized under the void act of 1888, contracted for street improvements payable with warrants on a special assessment fund was, after the completion of the work, reorganized under this act, and thereafter ratified the indebtedness for the street improvements aforesaid and declared it to be a town debt, warrants drawn on the general fund after the exhaustion of the special fund, in exchange for special assessment warrants, are without consideration and void; since the assessment district and not the city was liable therefor: State ex rel. Security Sav. Soc. v. Moss, 44 Wash. 91, 86 Pac. 1129.

§ 8888. [7439.] Validation of Attempted Incorporations.

The incorporation of all cities and towns in this state heretofore had or attempted under sections 1, 2 and 3 of an act entitled "An act providing for the organization, classification, incorporation and government of municipal corporations, and declaring an emergency," approved March 24, 1890, and the reincorporation of all cities and towns in this state heretofore had or attempted under sections 1, 4 and 5 of said act, under which attempted incorporation or reincorporation an organized government has been maintained since the date thereof, is hereby for all purposes declared legal and valid, and such cities and towns are hereby declared duly incorporated. And all contracts and obligations heretofore made, entered into or incurred by any such city or town so incorporated or reincorporated are hereby declared legal and valid and of full force and effect. [Cf. L. '90, p. 135, § 6; 1 H. C., § 498; L. '93, p. 183, § 1.]

Cited in 1 Wash. 288, 289; 3 Wash. 9, 11; 7 Wash. 231—233; 8 Wash. 520, 523, 659; 9 Wash. 112; 15 Wash. 411, 574; 16 Wash. 420; 20 Wash. 89; 43 Wash. 68; 44 Wash. 98.

Curative Statutes: See Remington's Digest, Mun. Corp., § 7; Seattle v. Yesler, 1 W. T. 571; Alger v. Hill, 2 Wash. 344, 27 Pac. 922; Denver v. Spokane Falls, 7 Wash. 226, 34 Pac. 926; Pullman v. Hungate, 8 Wash. 519, 36 Pac. 483; State ex rel. Rice v. Centralia, 8 Wash. 659, 36 Pac. 484; State ex rel. Bradley v. Berry,

13 Wash. 708, 42 Pac. 622; Abernethy v. Medical Lake, 9 Wash. 112, 37 Pac. 306.

Attacking Validity of Incorporation: See Remington's Digest, Mun. Corp., § 8; Ferguson v. Snohomish, 8 Wash. 668, 36 Pac. 969, 24 L. R. A. 795; Frace v. Tacoma, 16 Wash. 69, 47 Pac. 219; Kuhn v. Pt. Townsend, 12 Wash. 605, 41 Pac. 923, 50 Am. St. Rep. 911, 29 L. R. A. 445; State ex rel. Pros. Atty. v. South Park, 34 Wash. 162, 75 Pac. 636, 101 Am. St. Rep. 998.

§ 8889. [7440.] Validation of Notice of Election.

Any municipal corporation which has been incorporated under the existing laws of this state shall be a valid municipal corporation notwithstanding a failure to publish the notice of the election held or to be held for the purpose of determining whether such city should or shall become incorporated, for the length of time required by law governing such incorporation: Provided, a notice fulfilling in other respects the requirements of law shall have been published for one week prior to such election in a newspaper printed and published within the boundaries of the corporation. [L. '99, p. 103, § 1.]

§ 8890. [7441.] Effect upon Corporate Indebtedness.

When so incorporated, the debts due from such town, village, or city, to any person, firm, or corporation, may be assumed and paid by the municipal authorities of such town, village, or city; and all debts due to such town, village, or city, from any person, firm, or corporation, shall be deemed ratified, and may be collected in the same manner and in all respects as though such original incorporation were valid. [L. '90, p. 136, § 7; 1 H. C., § 499.]

See *infra*, §§ 9552—9555, validation of indebtedness of consolidated city.

Liability of territory annexed to municipality for existing debts. 27 L. R. A. (N. S.) 1147.

§ 8891. [7442.] Duty of Outgoing Officers.

As soon as the officers elected under the provisions of either section 8885 or section 8886 shall have qualified in accordance with law, all persons, if any, then in possession of the offices of such corporation shall immediately quit and surrender up the possession of such offices, and shall deliver to the officers elected all moneys, books, papers, or other things in their official custody, and all property of such corporation in their hands, notwithstanding that the terms of office for which they were respectively elected or appointed may not then have expired; and all officers, boards, and persons holding any property in trust for any public use, the administration of which use is vested by such general laws in such corporation, or in any of its officers, shall, upon demand from such corporation or such officers, convey such property to such corporation or such officers, by good and sufficient deeds of conveyance, in trust for such public use. [L. '90, p. 136, § 8; I H. C., § 500.]

CHAPTER II.**BOUNDARIES, ANNEXATION, ETC.****§ 8892. [7443.] Boundaries—Jurisdiction Over Contiguous Waters.**

The powers and jurisdiction of all incorporated cities of the state of Washington having their boundaries or any part of their boundaries adjacent to or fronting on any bay or bays, lake or lakes, sound or sounds, river or rivers, or other navigable waters, be and the same are hereby extended into and over said waters and over any tide lands intervening between any such boundary and any such waters to the middle of such bays, sounds, lakes, rivers or other waters, in every manner and for every purpose that such powers and jurisdiction could be exercised when such cities' limits include such waters or any part of such waters: Provided, that in towns of the fourth class the territory added by this section shall [not] be over and above the one square mile now established by law as the maximum territory within the limits of such town. [L. '09, p. 392, § 1.]

See *infra*, § 9202, annexation for park purposes.

Cited in 69 Wash. 293.

Boundaries, Designation and Change:
See Remington's Digest, Mun. Corp., §§ 10, 11; *Pacific Sheet Metal Works v. Roeder*, 26 Wash. 183, 66 Pac. 428; *Campbell, In re*, 1 Wash. 287, 24 Pac. 624; *Ferguson v. Snohomish*, 8 Wash. 668, 36 Pac. 969, 24 L. R. A. 795.

The boundaries of cities are extended by this section, which authorizes the levy of city taxes upon property situated within the extended limits: *Pacific American Fisheries v. Whatcom County*, 69 Wash. 291, 124 Pac. 905.

This section is not violative of the constitutional provisions inhibiting the incorporation or alteration of cities by special laws, or the enactment of any private or special laws granting corporate powers or privileges: *Pacific American Fisheries v. Whatcom County*, 69 Wash. 291, 124 Pac. 905.

Boundary of municipality on navigable and tidal waters. 23 L. R. A. 520; 45 L. R. A. 243; 47 L. R. A. (N. S.) 1161.

§ 8893. Unincorporated Area Within Certain First Class Cities.

Any unincorporated area now lying wholly within the limits of any city of the first class having a population of two hundred and fifty thou-

sand or upwards is hereby declared to be incorporated in, and to become a part of, the territorial limits of such city, and same shall be subject to the jurisdiction, laws and ordinances relating thereto: Provided, that no property so situated and so incorporated shall ever be taxed or assessed to pay any portion of the existing indebtedness of such city at the time this act shall take effect and contracted prior to, or existing, at the date of the passage of this act. [L. '21, p. 568, § 1.]

§ 8894. [7444.] Boundaries—Annexation by City Council—Election.

The boundaries of any municipal corporation may be altered and new territory included therein, after proceedings had as required in this section. The council, or other legislative body of such corporation, shall, upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors thereof, as shown by the votes cast at the last municipal election held therein, submit to the electors of such corporation, and to the electors residing in the territory proposed by such petition to be annexed to such corporation, the question whether such territory shall be annexed to such corporation and become a part thereof. Such question shall be submitted at a special election to be held for that purpose, and such legislative body shall give notice thereof, by publication in a newspaper printed and published in such corporation, and also in a newspaper printed and published outside of such corporation, and in the county in which such territory so proposed to be annexed is situated, in both cases for a period of four weeks prior to such election. Such notice shall distinctly state the proposition to be so submitted, and shall designate specifically the boundaries of the territory so proposed to be annexed; and the electors shall be invited thereby to vote upon such proposition, by placing upon their ballots the words "For annexation," or "Against annexation," or words equivalent thereto. Such legislative body shall also designate the place or places at which the polls will be opened in such territory so proposed to be annexed, which place or places shall be that or those usually used for that purpose within such territory, if any such there be. Such legislative body shall also appoint and designate in such notice the names of the officers of election. Such legislative body shall meet on the Monday next succeeding the day of such election, and proceed to canvass the votes cast thereat. The votes cast in such territory so proposed to be annexed shall be canvassed separately, and if it shall appear upon such canvass that a majority of all the votes cast in such territory and a majority of all the votes cast in such corporation shall be for annexation, such legislative body shall, by an order entered upon their minutes, cause their clerk, or other officer performing the duties of clerk, to make and transmit to the secretary of state a certified abstract of such vote, which abstract shall show the whole number of electors voting in such territory, the whole number of electors voting in such corporation, the number of votes cast in each for annexation, and the number of votes cast in each against annexation. From and after the date of the filing of such abstract such annexation shall be deemed complete, and thereafter such territory shall be and remain a part of such corporation: Provided, that no property within such territory so annexed shall ever be taxed to pay any portion of any indebt-

edness of such corporation contracted prior to or existing at the date of such annexation. If the territory so proposed to be annexed consists in whole or in part of any municipal corporation or part thereof, such territory shall not be annexed under the provisions of this section: Provided, that such territory does not contain a population exceeding two thousand. [Cf. L. '90, pp. 227—232; L. '90, p. 136, § 9; 1 H. C., § 501.]

Cited in 1 Wash. 288, 294, 296; 4 Wash. 774—776; 7 Wash. 227; 12 Wash. 609; 16 Wash. 69; 43 Wash. 28.

Annexation of Territory: See Remington's Digest, Mun. Corp., § 12; State ex rel. Snell v. Warner, 4 Wash. 773, 31 Pac. 25, 17 L. R. A. 263; Commissioners of King County v. Davies, 1 Wash. 290, 24 Pac. 540; Kuhn v. Port Townsend, 12 Wash. 605, 41 Pac. 923, 50 Am. St. Rep. 911, 29 L. R. A. 445; State ex rel. Dodge v. Langhorne, 12 Wash. 588, 41 Pac. 917.

This section relating to the annexation of territory to a city applies to all cities in this state: Commissioners of King County v. Davies, 1 Wash. 290, 24 Pac. 540; State ex rel. Snell v. Warner, 4 Wash. 773, 31 Pac. 25, 17 L. R. A. 263; Kuhn v. Port Townsend, 12 Wash. 605, 41 Pac. 923, 50 Am. St. Rep. 911, 29 L. R. A. 445.

Submission of Question to Popular Vote: See Remington's Digest, Mun. Corp., § 14; Commissioners of King County v. Davies, 1 Wash. 290, 24 Pac. 540; State v. Nichol, 40 Wash. 517, 82 Pac. 895; Brown's Estate v. West Seattle, 43 Wash. 26, 85 Pac. 854; State ex rel. Lambert v. Superior Court, 59 Wash. 670,

110 Pac. 622; Wilton v. Pierce County, 61 Wash. 386, 112 Pac. 386; Paine v. Port of Seattle, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580.

Under this section, an election in the town of W. S. is valid when the notice was published in the "W. S. Observer," which was generally circulated in the town and had been designated the official paper of such town, although the mechanical work of printing the paper was done in the city of S., the town of W. S. having no newspaper actually printed within its limits: Brown's Estate v. West Seattle, 43 Wash. 26, 85 Pac. 854.

Necessity that property annexed to a city be adjacent or contiguous. **Ann. Cas.** 1913D, 401.

Collateral attack upon proceedings for annexation of territory. 3 **Ann. Cas.** 243.

Validity of statute creating new municipality only on ratification by voters within territory affected. **Ann. Cas.** 1914C, 626.

Validity of extension of territorial limits of municipality including state property. **Ann. Cas.** 1915A, 1014.

§ 8895. [7444-1.] Validation of Enlargement of Area.

All extensions of boundaries or enlargement of limits or areas of any and all cities or towns of the third class of the state of Washington heretofore made or attempted to be made by election, action of councils, commissioners or other governing bodies whether the same was regular or not are hereby validated and all territory included or attempted to be included by such extension of boundaries or enlargement of limits or area of any city or town of the third class whether regularly or irregularly done and whether by election, action of councils, board of commissioners, or other governing bodies is hereby declared to be a portion and part of such city or town so enlarging or attempting to enlarge its boundaries, area or limits. [L.'15, p. 264, § 1.]

Operation and Effect: See Remington's Digest, Mun. Corp., § 15; McGovern v. Fairchilds, 2 Wash. 479, 27 Pac. 173;

Whiting v. Collier, 9 Wash. 412, 37 Pac. 660; Ettor v. Tacoma, 77 Wash. 267, 137 Pac. 820.

§ 8896. [7445.] Annexation to Cities of First Class.

Any portion of a county not heretofore incorporated as a municipal corporation, lying contiguous to any city of the first class, may become annexed to such city under the provisions of this act, and when so annexed shall become a part of said city: Provided, that whenever any

such unincorporated territory is separated from any city of the first class by water, or by tide or shore lands on which no bona fide residence is maintained by any person, said unincorporated territory shall be deemed contiguous for all the purposes of this act. [L. '07, p. 676, § 1.]

"Act" in this section refers to §§ 8896—8901.

See § 8894, *supra*, and notes.

Cited in 61 Wash. 387.

§ 8897. [7446.] Petition to County Commissioners—Notice of Hearing.

A petition shall be presented to the board of county commissioners of such county, signed by at least twenty per centum of the qualified electors of such county, residents within the limits of the territory proposed to be annexed to such city, who voted at the last previous election as shown by the official poll-books, which petition shall set forth and particularly describe the boundaries of such territory, and state the number of qualified electors residing within such boundaries as nearly as may be, and shall pray that an election shall be called and held within the limits of such territory for the purpose of submitting to the qualified electors residing therein, the question of such annexation under the provisions of this act. Such petition shall be filed in the office of such board and at the next regular or special meeting of said board thereafter, said board shall fix date for the hearing of the same, which shall be had not less than two weeks, nor more than four weeks thereafter, and notice of the hearing on said petition shall be published by said petitioners for at least two weeks prior thereto in some newspaper printed and published in such city to which it is proposed to annex such territory. After the filing of said petition as aforesaid, and pending the hearing of the same and pending the election to be called thereunder, said board shall not consider any other petition involving any portion of the territory embraced therein, provided that said petition may be withdrawn or a new petition embracing other or different boundaries substituted therefor by a majority of the signers thereof, when the same proceeding shall be taken as in the case of an original petition. Upon the date fixed for the hearing of said petition as aforesaid said board of county commissioners shall hear the same, or may continue such hearing from time to time not exceeding two weeks thereafter, and upon such hearing, if said petition be regular, said board shall grant the prayer thereof. [L. '07, p. 676, § 2.]

"Act": See note to last section.

§ 8898. [7447.] Notice of Election—Publication.

Upon the granting of said petition said board shall thereupon give notice of an election to be held in such proposed territory to be annexed, not less than thirty nor more than sixty days thereafter, for the purpose of determining whether the qualified electors thereof desire the annexation of the same to such city. Such notice shall particularly describe the boundaries of said territory and shall state the objects thereof as prayed in said petition, and shall be published for at least two weeks prior to the date of such election in a newspaper printed and published within the limits of the said territory to be annexed, or, if there be no such

newspaper, then in a newspaper printed and published in the city to which said territory is proposed to be annexed and by posting notice of such election, for at least two weeks in four public places within such territory. Such notices shall require the voters to cast ballots which shall contain the words "For annexation," or "Against annexation," or words equivalent thereto, which said ballots shall be furnished by said board of county commissioners. [L. '07, p. 677, § 3.]

In General: See Remington's Digest, Mun. Corp., § 14, and cases cited.

§ 8899. [7448.] Voters—Returns—Abstract of Vote.

Such election shall be conducted in accordance with the general election laws of the state, and no person shall be entitled to vote thereat unless he shall be a qualified elector and shall have resided within the limits of the territory so proposed to be annexed for the period of thirty days next preceding such election. The board of county commissioners shall meet on the Monday next succeeding such election and proceed to canvass the votes cast thereat; and if upon such canvass, it appears that a majority of the votes cast are for annexation, the board shall, by an order entered upon their minutes, declare such finding, and shall forthwith transmit to and file with the city clerk of such city to which said annexation is proposed, a duly certified copy of such finding and order, together with a certified abstract of such vote, which abstract shall show the whole number of electors voting at such election, the number of votes cast for annexation and the number of votes cast against annexation. [L. '07, p. 678, § 4.]

§ 8900. [7449.] Abstract of Canvass—Transmission to City Council—Indebtedness.

Upon the filing of such finding and order, together with such abstract with said city clerk as prescribed in the last preceding section, said clerk shall transmit the same to the city council of such city at its next regular meeting held thereafter, for the consideration by said council at such meeting, or as soon thereafter as may be practicable, and if said council deem it wise or expedient to take or annex such contiguous territory to said city, then said council shall adopt a resolution requiring its corporate counsel to prepare an ordinance providing for the annexation of said territory in due form of law, and upon the adoption of such ordinance by said council and the taking effect thereof the said territory so annexed shall thereupon become a part of such city and subject to all its laws and ordinances then and thereafter in force: Provided, that no property within the limits [of] such territory so annexed shall ever be taxed or assessed to pay any portion of any indebtedness of such city to which it shall be so annexed, contracted prior to, or existing at, the date of such annexation. [L. '07, p. 678, § 5.]

Cited in 77 Wash. 273.

§ 8901. [7450.] Act Concurrent.

Nothing herein contained shall be deemed to supersede or repeal any existing law providing for the annexation of adjacent territory or extension of the boundaries of cities of the first class, but the same shall be

considered as an alternative or concurrent proceeding herewith. [L. '07, p. 679, § 6.]

As to proceedings for annexation applicable to all cities, see § 8894, *supra*.

Consolidation of cities and towns: See § 8909 et seq.

§ 8902. [7451.] Reduction of Corporate Limits—Proceedings Required.

The boundaries of any municipal corporation may be altered and a portion of the territory thereof excluded therefrom after proceedings had as required in this act. Upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors thereof, as shown by the votes cast at the last municipal election held therein, praying the city council or other legislative body to submit to the qualified electors of said corporation the proposition to change and alter the corporate limits of said city, town or village, and to exclude a portion of the territory therefrom, setting out and describing the territory to be excluded therefrom, together with the boundaries of the said corporation as it will exist after such change is made, the city council or other legislative body of said corporation shall submit to the electors of said corporation the question whether such territory shall be excluded from said corporation and be no longer a part thereof. Such question shall be submitted at a special election to be held for that purpose, and said legislative body shall give notice thereof by publication for at least four weeks prior to said election, in some newspaper printed and published in said corporation. Such notice shall distinctly state the proposition to be submitted, and shall designate specifically the territory so proposed to be excluded, and the boundary of said corporation after said alterations of its boundaries and the exclusion of the portion of the territory therefrom; and the electors shall be invited thereby to vote upon such proposition by placing upon their ballots the words "For reduction of corporate limits," and "Against reduction of corporate limits," or words equal thereto; said legislative body shall also bound and designate in such notice the names of the officers of election and the place or places at which the polls will be opened for said election. Said legislative body shall meet on the Monday next succeeding such election and proceed to canvass the votes cast thereat. The votes cast in said corporation shall be canvassed, and if it shall appear upon said canvass that three-fifths of the electors voting at said election shall be for the reduction of the territory, said legislative body shall, by an order entered upon their minutes, cause their clerk, or other officer performing the duties of clerk, to make and transmit to the secretary of state a certified abstract of said vote, which abstract shall show the whole number of electors voting in said corporation, the number of votes cast for the reduction of territory, and the number of votes cast against the reduction of territory. [L. '95, p. 183, § 1.]

"Act" in this section refers to §§ 8902—8905.

§ 8903. [7452.] Declaration by Council.

The city council or other legislative body of said corporation shall, immediately after said abstract of votes has been filed with the secretary of state, cause to be introduced and passed an ordinance defining and fixing the corporate limits of said corporation as set out and defined in

the petition and notice of election, as referred to in section 8902, and setting forth by metes and bounds or by legal subdivisions the territory excluded from said corporation, and declaring such territory no longer a part of said corporation. [L. '95, p. 184, § 2.]

§ 8904. [7453.] Plat of Limits as Reduced.

Immediately after the passage, approval and publication of said ordinance, a copy thereof, duly certified by the clerk of said corporation or other officer performing the duties of clerk, together with a map and plat showing the corporate limits of said corporation as altered and changed, shall be filed and recorded in the office of the county auditor in the county in which said municipal corporation is situate. Thereafter the boundary of said corporation shall be as set forth in said ordinance. [L. '95, p. 185, § 3.]

§ 8905. [7454.] Election for Reduction—Time of.

No election provided for in this act shall be held within ninety days next preceding any general election held under the laws of the state of Washington, or of any general municipal election held under said laws or the ordinances of the corporation: Provided, that nothing herein shall be so construed as to exempt any real property segregated by the provisions of this act from taxation for the purpose of paying any outstanding bonded or other indebtedness of any such city, and the interest of any such indebtedness. [L. '95, p. 185, § 4.]

"Act" in this section refers to §§ 8902—8905.

§ 8906. [7454-1.] Authority to Accept Grants from United States.

Whenever there shall have heretofore been or shall hereafter be tendered or offered to any incorporated city other than cities of the first class, by gift, grant or lease, from the government of the United States the right to occupy, control, improve, use or sublease for commercial, manufacturing or industrial purposes, any lands, waters or other territory lying adjacent to but outside the corporate limits of such city, the legislative authorities of such city if they shall deem it necessary or expedient or for the best interests of such city, may and they are hereby authorized to, by ordinance, accept such tender or offer and assume and exercise, on behalf of such city, the right to occupy, control, improve, use and sublease such territory and comply with all the conditions of said gift, grant or lease, and annex said territory, and such intervening or adjacent shore or tide lands as may be convenient or necessary for the use thereof, and to include the same within the corporate limits of such city: Provided, this act shall not apply to any territory or property more than four miles from the corporate limits existing before such annexation. [L. '15, p. 29, § 1.]

§ 8907. [7454-2.] Division of Annexed Territory into Wards.

Whenever any city shall have annexed or shall hereafter annex any such territory as in the preceding section provided, the territory so annexed shall become and be a part of the ward or wards of such city adjacent thereto or shall become and be a separate ward of such city as may be

provided in the ordinance annexing the same, and such city shall thereafter have and may exercise over and within such annexed territory the same jurisdiction and authority that it had within its former corporate limits at the time of such annexation or which may be thereafter conferred upon it by law, and may cause such annexed territory, lands and waters to be surveyed, subdivided and platted into lots, blocks and tracts, and lay out and reserve for public use and improve streets, roads, alleys, slips and other public places, and grant and sublease any such lot, block or tract for commercial, manufacturing or industrial purposes, and reserve, receive and collect rents therefor and expend the same in making and maintaining public improvements within such annexed territory, and in case any surplus thereof remains at the end of any fiscal year, may deposit the same in the current expense or general fund of such city and expend the same for any municipal purpose. [L. '15, p. 29, § 2.]

§ 8908. [7454-3.] Validation of Prior Acceptances.

All ordinances heretofore passed by the legislative authority of any such incorporated city for the purpose of accepting any gift, grant or lease of or annexing any territory as hereinabove provided are hereby validated. [L. '15, p. 30, § 3.]

CHAPTER III.

CONSOLIDATION.

§ 8909. [7455.] Procedure—Election—Notice—Ballots.

Two or more contiguous municipal corporations may become consolidated into one corporation after proceedings had as required in this chapter: The council, or other legislative body, of either of such corporations, shall upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors of each of such corporations, as shown by the votes cast at the last municipal election held in each of such corporations, submit to the electors of each of such corporations the question whether such corporations shall become consolidated into one corporation. Such legislative body shall designate a day upon which a special election shall be held in each of such corporations to determine whether such consolidation shall be effected, and shall give written notice thereof to the council or other legislative body of each of the other of such corporations, which notice shall designate the name of a proposed new corporation. It shall thereupon be the duty of such legislative body of each of the corporations so proposed to be consolidated to give notice of such election by publication in a newspaper, printed and published in such corporation, for a period of four weeks prior to such election. Such notice shall distinctly state the proposition to be submitted, the names of the corporations so proposed to be consolidated, the name of the proposed new corporation, and the class to which such proposed new corporation will belong, and shall invite the electors to vote upon such proposition by placing upon their ballots the words "For consolidation," or "Against consolidation," or words equivalent thereto. [L. '07, p. 595, § 1. See historical references to § 8913, *infra*.]

This section is an amendment of § 10 of the act of March 27, 1890.

See *infra*, §§ 9552—9555, validation of indebtedness of consolidated city.

Cited in 1 Wash. 294; 3 Wash. 8, 9, 11;
4 Wash. 128, 130, 131, 134; 15 Wash. 193;
33 Wash. 275, 276.

Annexation, Consolidation and Submission to Popular Vote: See Remington's Digest, Mun. Corp., §§ 12—14, and cases cited.

Operation and Effect: See Remington's Digest, Mun. Corp., § 15, and cases cited.

Constitutionality of local or special laws consolidating municipal corporations. 3 Ann. Cas. 499.

§ 8910. [7456.] Canvass of Votes—Abstract Filed—Special Election for Officers.

The legislative bodies of each of such corporations shall meet in joint convention at the usual place of meeting of the legislative body of that one of the corporations having the largest population, as shown by the last state census, on the Monday next succeeding the day of such election, and proceed to canvass the votes cast thereat. The votes cast in each of such corporations shall be canvassed separately; and if it shall appear upon such canvass that a majority of the votes cast in each of such corporations shall be for consolidation, such joint convention, by an order entered upon their minutes, shall cause the clerk or other officer performing the duties of clerk, of the legislative body at whose place of meeting such joint convention was held, to make a certified abstract of such vote, which abstract shall show the whole number of electors voting at such election in each of such corporations, the number of votes cast in each for consolidation, and the number of votes cast in each against consolidation. Such abstract shall be recorded upon the minutes of the legislative body of each of such corporations, and immediately upon the record thereof, it shall be the duty of the clerk, or other officer performing the duties of clerk, of each of such legislative bodies, to transmit to the secretary of state a certified copy of such abstract. Immediately after such filing the legislative body of that one of such corporations having the greatest population, as shown by the last state or national census, shall call a special election, to be held in such new corporation, for the election of the officers required by law to be elected in corporations of the class to which such new corporation shall belong; which election shall be held six months thereafter. Such election shall be called and conducted in all respects in the manner prescribed, or that may hereafter be prescribed by law for municipal elections in corporations of such class, and shall be canvassed by the legislative body so calling the same, who shall immediately declare the result thereof and cause the same to be entered upon their journal. [L. '07, p. 596, § 1.]

§ 8911. [7457.] Consolidation Effected When—Application of Act.

From and after the date of such entry such corporation shall be deemed to be consolidated into one corporation under the name and style of the city (or town as the case may be) of — (naming it) with the powers conferred or that may hereafter be conferred by law upon municipal corporations of the class to which the same shall so belong and the officers elected at such elections shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively, only until the next general municipal election to be held in such city or town, and until their successors are elected and qualified. All the provisions of sec-

tions 8887 and 8888 shall apply to such corporations and to the officers thereof: Provided, that in all cases wherein cities and towns of the third and fourth class desire annexation to cities of the first class, no election shall be required to be held in such cities of the first class. [L. '07, p. 597, § 1.]

§ 8912. [7458.] Consolidation of Third and Fourth Class With First Class Cities—Election.

When any city or town of the third or fourth class shall vote in favor of annexation to any city of the first class, the legislative body of such city or town so voting shall canvass such votes, and if in favor of annexation may (if said city or town desires to be annexed as a separate ward or wards of the city of the first class) forthwith cause a census to be taken by one or more suitable persons of all the inhabitants of such city or town; in which census the full name of each person shall be plainly written and the names alphabetically arranged and regularly numbered in one complete series; which census shall be verified before an officer authorized to administer oaths, and upon the completion of such census the legislative body of such city or town shall forthwith file a petition, together with an abstract of the votes so taken and canvassed and a copy of the census so taken, with the city council of such city of the first class, praying for annexation under the name of such city of the first class. [L. '07, p. 597, § 1.]

§ 8913. [7459.] Petition to First Class City—Hearing—Ordinances.

At the next regular meeting of the city council of said city of the first class following the filing of such petition, abstract and copy of census, or as soon thereafter as practicable, said city council shall proceed to hear such petition, with the abstract and census attached, for annexation and if said council so deem it wise and expedient to take or annex such city or town of the third or fourth class then the city council of said city of the first class shall pass a resolution requiring its corporation council [counsel] to prepare an ordinance, as required by law and the charter of said city, covering the annexation of said city or town; which ordinance, in case of the population of said city or town as shown by said census is sufficient to constitute one or more wards under the charter of said city of the first class, shall provide that said city or town be annexed as one or more wards according to its population, as shown by said census, and shall assign a number or numbers thereto; and present the same to the city council. Upon the taking effect of said ordinance of such city of the first class such city or town so desiring to be annexed shall thereupon become a part of such city of the first class under the name of such city of the first class and subject to all its laws and ordinances then and there in force: Provided, that if the city or town so annexed shall have sufficient population, as shown by said census, to constitute a separate ward or wards, such city or town shall thereupon become a separate and distinct ward or wards of the said city of the first class, and the city council of the said city of the first class shall immediately call a special election to be held in such new ward or wards for the purpose of electing one councilman from each ward, who shall hold office

until the next general election held in said city of the first class; such special election shall be held and conducted in all respects the same as provided by the charter, laws and ordinances of such city of the first class for the holding of special elections; and simultaneously the terms of office of the officers of the city or towns so annexed shall terminate. And it shall be the duty of the clerk of said city of the first class to forthwith transmit to the secretary of state a certified copy of the proceedings so had before said city of the first class relating to said matters of annexation: And further provided, that no property within either of the former corporations so consolidated shall ever be taxed to pay any portion of any indebtedness of either of the other of such former corporations, contracted prior to, or existing at, the date of such consolidation: And provided further, that where municipalities are separated by water or by tide or shore lands upon which no bona fide residence is maintained by any person such municipality shall be deemed to be contiguous for all the purposes of this chapter and may be consolidated under the terms hereof, and upon such consolidation any such intervening water, tide or shore lands shall become part of the consolidated city. [L. '90, p. 138, § 10; 1 H. C., § 502; L. '03, p. 279, § 1; L. '07, p. 598, § 1.]

See supra, § 5646, election for validation of debt, vote how taken.

See infra, § 9552 et seq., legalizing indebtedness in cases of consolidation.

Cited in 73 Wash. 517.

In the absence of statutory regulation, upon the annexation of a city, the property and assets of the merged city become the property and assets of the

other, free from any trust to apply it in payment of debts upon such property; and this section does not impress the property with any such trust: Forsyth v. Seattle, 73 Wash. 515, 132 Pac. 224.

CHAPTER IV.

DISSOLUTION OF THIRD AND FOURTH CLASS CITIES.

§ 8914. [7460.] Disincorporation.

Cities of the third and fourth class, having a population of less than four thousand inhabitants, and incorporated towns in the state of Washington, may be disincorporated in the manner following:— [L. '97, p. 127, § 1.]

Cited in 84 Wash. 260.

Dissolution of Corporation: See Remington's Digest, Mun. Corp., § 21½: Parish v. Collins, 43 Wash. 392, 86 Pac. 557.

Dissolution of municipal corporation by nonuser or misuser of franchise. 12 Ann. Cas. 1137.

§ 8915. [7461.] Petition—Election.

Whenever a petition signed by a majority of the lawful registered voters of a city of the third and fourth class, containing less than four thousand inhabitants, shall be filed with the council of such city, or whenever a petition signed by a majority of the lawful registered voters of an incorporated town, shall be filed with the council of such town, it shall be the duty of such town to forthwith order an election to be held therein for the purpose of determining whether or not such corporation shall be dissolved, and for the further purpose of electing a receiver for the purpose of winding up the affairs of such city or town in case of dissolution: Provided, that in such cities and towns as may have no indebtedness or

outstanding liabilities a receiver shall not be elected. The election provided for herein shall be at least thirty days after the filing of the petition upon which the election may be ordered. [L. '97, p. 127, § 2.]

§ 8916. [7462.] Notice of Election.

It shall be the duty of the city or town clerk, as the case may be, to give at least twenty days' notice of such election. The notice shall contain a statement of the purpose or purposes for which the election is called, and the time at which it is to be held, and shall be published for at least two consecutive weeks in any weekly newspaper published in such city or town. If there be no such paper, then such notice shall be posted, and kept posted, in five of the most public places thereof for the period of at least twenty days previous to the day of election. [L. '97, p. 128, § 3.]

§ 8917. [7463.] Ballots, Form of.

The ballots for such election shall be printed at the expense of the corporation, and there shall be printed upon each of such ballots the words "For dissolution" in one line, and the words "Against dissolution" in another line, and in other and separate lines the names of each of the lawfully nominated candidates for receiver. In all other respects such ballots shall be in conformity with the law regulating elections in such cities and towns. [L. '97, p. 128, § 4.]

§ 8918. [7464.] Voting, Manner of.

Such election shall be conducted as other elections are required by law to be conducted in such cities or towns, excepting as is herein otherwise provided; and only such persons shall be qualified to vote thereat as would be competent to vote at a general municipal election thereof. The voter shall indicate his choice by affixing a designating mark after the words "For dissolution" or after the words "Against dissolution," as he may desire, and also by affixing such distinguishing mark opposite the name of the person for whom he desires to vote as receiver, if a receiver is to be voted for. [L. '97, p. 128, § 5.]

§ 8919. [7465.] Returns, Canvass of.

The result of such election, together with the ballots cast, shall be certified by the election officers to the council of such city or town, which council shall canvass such returns at a meeting which shall be held one week from the day of such election, and shall declare the result, which shall be made of record in the journal of the council proceedings. If the vote "For dissolution" be a majority of the registered voters of such city or town, such corporation shall be deemed dissolved, and, except as otherwise herein provided, the powers and privileges of such corporation shall be deemed surrendered to the state, and, except as otherwise provided herein, it shall be absolved from any further duty to the state or its own inhabitants: Provided, that all the offices of such city or town shall continue in the exercise of all their powers until the receiver provided for in this chapter shall have qualified: And provided further, that in case no receiver is required, all the officers appertaining

to such city or town shall, upon the entry of such result, forthwith cease to exist. [L. '97, p. 129, § 6.]

§ 8920. [7466.] Receiver to Qualify.

In case of a dissolution of such corporation, the person receiving the highest number of votes for receiver shall be declared elected as such, and he shall within ten days thereafter qualify by filing with the county auditor of the county in which such city or town may be situated, a bond in penalty equal in amount to the audited indebtedness and established liabilities of such city or town, with sureties to the satisfaction of the board of county commissioners or the judge of the superior court of such county, if the commissioners be not in session, which bond shall run to the state of Washington and shall be conditioned for the faithful performance of his duties as such receiver, and the prompt payment in the order of their priority of all lawful claims against such city or town, as they may be finally established, and as funds may come into his hands with which to discharge them. Such bond shall be filed by the county auditor and shall be a public record, and shall be for the benefit of any person who may be injured by the failure or refusal of such receiver to discharge his duty. [L. '97, p. 129, § 7.]

§ 8921. [7467.] Procedure in Case of Failure to Qualify.

In case such receiver shall fail to qualify in the manner and form herein provided, within ten days after the result of the election shall have been declared, it shall be the duty of the council to file in the superior court of the county in which such city or town may be situated, a petition setting forth the fact of the election and the result thereof, and the failure of the receiver elected thereat to qualify within the time last above mentioned, and praying for the appointment of another person as a receiver, of which said petition, and of the time of making application thereupon, such receiver shall have three days' notice, if he be found within the county, otherwise no notice shall be required, and thereupon the court shall be deemed to have jurisdiction of the matter for all purposes, and unless good cause to the contrary be shown, such court shall appoint some suitable and proper person as such receiver, who shall in turn and within ten days qualify as prescribed in section 8920. In case the council do not file the petition and make the application provided for by this section, within the time herein provided, it shall be the privilege of any taxpayer or citizen of such city or town to file such petition and to make such application. [L. '97, p. 130, § 8.]

§ 8922. [7468.] Receiver's Duties.

Upon qualifying, as hereinbefore provided, it shall be the duty of the receiver to take possession, and the duty of the several officers of the late corporation to surrender to such receiver all the property, moneys, vouchers, records and books thereof, or in any manner appertaining to its business, and he shall forthwith proceed to wind [up] the affairs of such city or town; and for such purpose he shall have authority to pay:—

All outstanding warrants and bonds;

All lawful claims against the city or town which have been duly audited and allowed by the council;

All lawful claims which may be presented to him within the time limited by law for the presentation of such claims, but no claim shall be allowed or paid which is not presented within six months from the date of the election provided for in section 8918;

All claims that by final adjudication may come to be established as lawful claims against the corporation;

All outstanding warrants and claims shall be paid in the order of their priority, having reference to the fund on which they are properly a charge, and all bonds shall be paid in the order of their maturity, having reference to the fund on which they are issued. [L. '97, p. 130, § 9.]

§ 8923. [7469.] Sale of Property to Pay Debts—Tax.

For the purpose of enabling the receiver to pay such claims, he is hereby authorized to sell at public auction, after such public notice as the sheriff is required to give on sale of like property, all the property of such late corporation, excepting such as may be necessary to enable him to wind up the affairs thereof, and excepting also all such as may have been dedicated to public use. Personal property shall be sold for cash in hand, and real property may be sold either for cash in hand, or for one-half cash and the balance in deferred payments, the last payment not being later than one year from the date of sale, in the discretion of the receiver, he, however, to hold the title until the purchase price shall have been fully paid. The receiver shall further have the power to levy taxes on all property in the same manner and to the same extent as the proper authorities of the city or town could have done if such corporation had not been dissolved, and to receive such taxes when collected, and to apply the proceeds arising from such sales and taxes to the extinguishment of the obligations of such late corporation in the manner provided in the last preceding section, but after all the legal claims against such late corporation have been paid excepting bonds not yet due, the tax levy shall be no greater than sufficient to meet the accruing interest, until the maturity of such bonds or securities, when the levy may be sufficient to meet the same: Provided, that no levy greater than two mills on the dollar shall be made therefor. [L. '97, p. 131, § 10.]

§ 8924. [7470.] Commissions of Receiver.

The receiver shall be entitled to deduct from any funds coming into his hands a commission of six per centum on the first thousand dollars, five per centum on the second thousand, and four per centum on all moneys over two thousand, as his full compensation, exclusive of necessary traveling expenses and necessary disbursements, but not exclusive of attorneys' fees. [L. '97, p. 131, § 11.]

§ 8925. [7471.] May Sue and be Sued.

The receiver shall have the right to sue and be sued in all cases whatsoever necessary or proper for the purpose of winding up the affairs of the late corporation, and shall be subject to be sued in all cases wherein the city or town might have been sued, excepting as in this chapter otherwise provided. [L. '97, p. 132, § 12.]

§ 8926. [7472.] May be Removed for Cause.

The receiver shall proceed to wind up the affairs of the late corporation with diligence, and may, for negligence or misconduct in the discharge of his duties, be subject to removal by the superior court upon a proper showing made by a taxpayer of such late corporation, or by an unsatisfied creditor thereof. In case of the removal, death or resignation of a receiver, the court shall have power to appoint a new receiver and to take charge of the affairs of the late corporation, as in case of other receiverships. [L. '97, p. 132, § 13.]

§ 8927. [7473.] How Discharged.

Upon the final payment of all lawful demands against such late corporation, it shall be the duty of the receiver to file a final account, together with all vouchers, with the county clerk, and any funds remaining in his hands shall be paid to the county treasurer for the use of the school district in which such city or town may be situated; and thereupon such receivership shall be deemed ended. [L. '97, p. 132, § 14.]

§ 8928. [7474.] When No Receiver Elected, Procedure.

In case an election should be ordered as provided in section 8915, and no receiver should be elected, upon the supposition that there was no indebtedness or outstanding liabilities, and it should subsequently transpire that there was such indebtedness or liability, any person interested may, unless such indebtedness be paid, file a petition in the superior court, and the court shall appoint a receiver, who shall qualify, and proceed in like manner and have like powers and authority as any other receiver provided for in this chapter. [L. '97, p. 132, § 15.]

§ 8929. [7475.] Census.

In case a petition be filed for the purpose of calling an election, as provided in section 8915, it shall be the duty of the council to appoint a suitable person to make an enumeration of the inhabitants of such city, and such enumeration, unless impeached for fraud, shall be conclusive: Provided, that if an enumeration shall have been made for the city, county, state or the United States within six months next previous to the filing of such petition, and such enumeration shows the population of such city to be less than four thousand inhabitants, then no other enumeration shall be necessary. [L. '97, p. 132, § 16.]

§ 8930. [7476.] Streets to Remain Public Highways.

Upon the dissolution of any incorporation, the streets and highways of such city or town shall revert to the control of the state, and shall remain public highways until closed in pursuance of law; and the territory embraced within such city or town shall be made into a new road district or annexed to adjoining districts, as may be ordered by the board of county commissioners of the county embracing such city or town. [L. '97, p. 133, § 17.]

§ 8931. [7477.] Existing Contracts not to be Impaired.

Nothing herein contained shall be construed as impairing the obligation of any contract; and in case any franchise may have been lawfully

granted, which franchise shall not have expired at the time of the dissolution of such municipal corporation, nothing herein contained shall be construed as an impairment of such franchise, and no right shall be implied herefrom to interfere therewith to any greater extent than such city or town might lawfully have done had it remained incorporated. [L. '97, p. 133, § 18.]

CHAPTER V.

CLASSIFICATION.

Unclassified cities: See next chapter.

§ 8932. [7478.] How Classified.

Municipal corporations are divided into cities and towns; cities are divided into three classes: first, second, and third. [L. '90, p. 140, § 11; 1 H. C., § 503.]

Cited in 70 Wash. 596.

Classification and Grades: See Remington's Digest, Mun. Corp., § 9, and cases cited.

Validity of statute classifying municipalities according to differences in population. 15 Ann. Cas. 856.

§ 8933. [7479.] Classification, How Determined.

Existing corporations organized as cities of the first class shall remain such, and the classes of those which may be or may become cities of the first class shall be determined as follows: Those which on the first day of the month of January last had, and those which hereafter on the first day of the month of January in any year have, according to an official report or abstract of the then next preceding federal or state census, more than twenty thousand inhabitants shall constitute the first class, and shall be organized and governed under the laws relating to cities authorized to frame and adopt their own charters; those which on the first day of the month of January last had, and those which hereafter on the first day of the month of January in any year have, when ascertained in the same way, more than ten thousand and less than twenty thousand inhabitants shall constitute the second class; and those which on the first day of the month of January last had, and those which hereafter on the first day of the month of January in any year have, when ascertained in the same way, more than fifteen hundred and less than ten thousand inhabitants shall constitute the third class: Provided, that when a petition is filed in accordance with section 8886, seeking reorganization of any town or city as a city of a higher class than that indicated by the last preceding federal or state census, then in such case the council or other legislative body to which such petition is presented, shall forthwith cause a census to be taken by one or more suitable persons, of all the inhabitants of such town or city in which census the full name of each person shall be plainly written, and the names alphabetically arranged and regularly numbered in complete series; which census shall be verified before an officer authorized to administer oaths, and filed with the clerk of the corporation. And if such census shows such city or town to belong to the class named in such petition, the same proceedings shall be had as if such census were a federal or state census. But if such census shows such town or city not entitled to belong to the class named in such petition, no further pro-

ceedings shall be had: Provided further, that such city or town may be re-organized as a city or town of the class indicated by such census, upon a proper petition filed within six months from the filing of such census with the clerk of the corporation, without other or further census. [L. '90, p. 140, § 12; 1 H. C., § 504; L. '07, p. 690, § 1.]

See *infra*, § 8952, census in cities of first class.

Cited in 62 Wash. 108; 64 Wash. 73; 78 Wash. 626.

§ 8934. [7480.] Towns Defined.

All corporations organized under this act, and containing not more than fifteen hundred nor less than three hundred inhabitants on the first day of the month of January last, shall be known as towns, and shall remain such until they become cities of the third class. [L. '90, p. 141, § 13; 1 H. C., § 505.]

"This act": See note to § 8883.

Cited in 4 Wash. 419; 64 Wash. 73; 70 Wash. 596.

The term "incorporated cities" as used in the appeal act of 1891 (2 Hill's Code, § 1408), applies to all municipal incorporations, and "towns" are accordingly not required to file bonds upon appeal: *Elma v. Carney*, 4 Wash. 418, 30 Pac. 732.

The same general powers are granted to cities and towns of the third and fourth class as to cities of the second class, but many powers are granted to larger cities which are not granted to smaller ones: *Wilson v. Byers*, 5 Wash. 303, 32 Pac. 90, 34 Am. St. Rep. 858.

§ 8935. [7481.] Rights and Privileges—Restrictions upon Area.

Municipal corporations now or hereafter organized are bodies politic and corporate under the name of the city of —, or the town of —, as the case may be, and as such may sue and be sued, contract or be contracted with, acquire, hold, possess, and dispose of property, subject to the restrictions contained in other chapters of this act, have a common seal, and change or alter the same at pleasure, and exercise such other powers, and have such other privileges, as are conferred by this title: Provided, that not more than one square mile in area shall be included within the corporate limits of municipal corporations of the fourth class, nor shall more than twenty acres of unplatted land belonging to any one person be taken within the corporate limits of municipal corporations of the fourth class, without the consent of the owner of such unplatted land. [L. '90, p. 141, § 15; 1 H. C., § 507.]

Cited in 105 Wash. 96.

Territory Which may be Included: See *Remington's Digest*, Mun. Corp., § 4, and cases cited.

Although platted for agricultural or garden purposes, lands may be included within the corporate limits of a town as platted land, where they were surveyed and subdivided into small tracts, designated

by lot numbers, with streets named: *State ex rel. Cummings v. Johnson*, 105 Wash. 93, 177 Pac. 699.

Under this section, the inclusion of 20 acres and the exclusion of 22.15 acres of one owner is proper: *State ex rel. Cummings v. Johnson*, 105 Wash. 93, 177 Pac. 699.

§ 8936. [7482.] Advancement into Classes.

A city of the second class shall not be advanced to the first class until it attains a population of twenty thousand inhabitants. A city of the third class shall not be advanced to the second class until it attains a population of ten thousand. A town shall not be advanced to a city of

the third class until it attains a population of fifteen hundred inhabitants. [L. '90, p. 141, § 14; 1 H. C., § 506.]

Cited in 64 Wash. 602.

Constitutional provision for transition of municipality from one class

to another as self-executing: Ann. Cas. 1916D, 868.

§ 8937. [7483.] Petition for—Election.

When a petition signed by one hundred freeholders of a town, or two hundred freeholders of a city of the third class, is presented to the council of the corporation in which the signers reside, setting forth that they desire such town to be advanced to a city of the third class, or such city of the third class to a city of the second class, and that they have the population requisite for such advancement, the council shall cause notice to be given by the mayor as in other cases, that at the next annual election for officers of such city or town, or at a special election to be called for that purpose, the electors may vote for or against the advancement, their ballots to contain the words "For advancement" or the words "Against advancement." [L. '90, p. 141, § 16; 1 H. C., § 508; L. '99, p. 102, § 1.]

See supra, § 8936, restrictions upon.

§ 8938. [7484.] Votes to be Certified.

The clerks and judges of such election shall forthwith certify in duplicate to the clerk of the corporation the whole number of votes given at such election, the number given for such advancement, and the number against it. [L. '90, p. 142, § 17; 1 H. C., § 509.]

§ 8939. [7485.] Census Taken When Advancement Prevails.

If a majority of the votes is in favor of the advancement, and the corporation, according to the last preceding federal or state census, had not the requisite population, the council shall forthwith cause a census to be taken by one or more suitable persons of all the inhabitants of such city or town; in which census the full name of each person shall be plainly written, and the names alphabetically arranged and regularly numbered in one complete series; which census shall be verified before an officer authorized to administer oaths, and filed with the clerk of the corporation. [L. '90, p. 142, § 18; 1 H. C., § 510.]

Cited in 64 Wash. 71—81; 78 Wash. 626.

Taking of Census in General: See Remington's Digest, Mun. Corp., § 9, and cases cited.

This section does not authorize a census by officers of the city to determine the salary of justices of the peace: State ex rel. Elwood v. Lovering, 78 Wash. 624, 139 Pac. 617.

§ 8940. [7486.] Proceedings Stayed, When.

The clerk shall lay the certificate of election and census before the council at its next regular meeting after the same shall have been filed in his office, and if it appear that all the votes cast for the advancement are not a majority of the votes cast at the election, or that the corporation does not contain the requisite population to be advanced, no further proceedings shall be had on that petition; but this shall not bar any new proceedings for such purpose. [L. '90, p. 142, § 19; 1 H. C., § 511.]

§ 8941. [7487.] Resolution to be Certified to Commissioners.

If a majority of votes is in favor of such advancement, and the corporation, according to the state census, or the census taken by order of the council, contains the requisite number of inhabitants, the council shall thereupon, by resolution, declare that the inhabitants of the corporation have decided on such advancement, and direct the clerk to certify the resolution to the clerk of the board of county commissioners. [L. '90, p. 142, § 20; 1 H. C., § 512.]

§ 8942. [7488.] Becomes City, When—Notice of.

It shall be the duty of the said board to cause a record of such action to be made, and when the clerk of said board shall make the record, he shall certify and forward to the secretary of state a transcript of the same, whereupon such corporation shall be a city of the third, second, or first class, as the case may be, to be organized and governed under the provisions of this act; and when the corporation is actually organized by the election and qualification of its officers, notice of its existence as such shall be taken in all judicial proceedings. [L. '90, p. 142, § 21; 1 H. C., § 513.]

"This act": See note to § 8883.

Cited in 64 Wash. 602.

After a town of the first class is raised to a city of the third class, the councilmen of the old corporation continue to act and have power to pass ordinances until the organization of the new corpo-

ration by the election and qualification of new officers at the next general election, pursuant to the provisions of this and the next section: State ex rel. Sylvester v. Superior Court, 64 Wash. 594, 117 Pac. 487.

§ 8943. [7489.] New Corporation to Elect Officers, When.

The first election of officers of the new corporation shall be at the first annual municipal election after such proceedings, and the officers of the old corporation shall remain in office until the officers of the new corporation are elected and qualified; and the ordinances, by-laws, and resolutions adopted by the old corporation shall, as far as consistent with the provisions of this act, continue in force until repealed by the council of the new corporation; and the council and officers of the old corporation shall, upon demand, after the expiration of their term of office, deliver to the proper officers of the new corporation all books of record, documents, and papers in their possession belonging to the old corporation. [L. '90, p. 143, § 22; 1 H. C., § 514.]

"This act": See note to § 8883.

Cited in 64 Wash. 602.

CHAPTER VI.**UNCLASSIFIED CITIES.****§ 8944. [7490.] Additional Powers Granted.**

The council, or other legislative body, of all cities within the state of Washington which were created by special charter prior to the adoption of the state Constitution, and which have not since re-incorporated under any general statute, shall have, in addition to the powers specially granted by the charter of such cities, the following powers:

- (1) To contruct, establish and maintain drains and sewers.
- (2) To impose and collect an annual license not exceeding two dollars on every dog owned or harbored within the limits of the city.
- (3) To levy and collect annually a property tax on all property within such city.
- (4) To license all shows, exhibitions and lawful games carried on therein; and to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.
- (5) To permit, under such restrictions as they may deem proper, the construction and maintenance of telephone, telegraph and electric light lines therein.
- (6) To impose fines, penalties and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance; to fix the penalty by fine or imprisonment or both (but no such fines shall exceed three hundred dollars or the term of imprisonment or both); but no such fine shall exceed three hundred dollars nor the term of imprisonment exceed three months.
- (7) To cause all persons imprisoned for violation of any ordinance to labor on the streets or other public property or works within the city.
- (8) To make all such ordinances, by-laws and regulations, not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the city, and to do and perform any and all other acts and things necessary and proper to carry out the purposes of the municipal corporation. [L. '99, p. 112, § 1.]

§ 8945. [7491.] Sewer Systems, Funds for.

The city council of all unclassified cities in this state are hereby authorized and empowered to construct a sewer or system of sewers and to keep the same in repair; the cost of such sewer or sewers shall be paid from a special fund to be known as the "sewer fund" [to] be provided by the city council which fund shall be created by a tax on all the property within the limits of such city: Provided, that such tax shall not exceed fifty cents on each one hundred dollars of the assessed value of all real and personal property within such city for any one year. Whenever it shall become necessary for the city to take or damage private property for the purpose of making or repairing sewers, and the city council cannot agree with the owner as to the price to be paid, the city council may direct proceedings to be taken by law for the condemnation of such property for such purpose. [L. '99, p. 113, § 2.]

§ 8946. [7492.] Power to Provide System for Assessments, etc., of Taxes.

The city council shall have power to provide by ordinance a complete system for the assessment, levy, and collection of all city taxes. All taxes assessed together with any percentage imposed for delinquency and the cost of collection, shall constitute liens on the property assessed from and after the first day of November each year; which liens may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance or by action in any court of competent

jurisdiction to foreclose such liens: Provided, that any property sold for taxes shall be subject to redemption within the time and within the manner provided or that may hereafter be provided by law for the redemption of property sold for state and county taxes. [L. '99, p. 114, § 3.]

CHAPTER VII.

CITIES OF FIRST CLASS, GENERAL PROVISIONS.

§ 8947. [7493.] Organization and Government.

Cities of the first class shall be organized and governed according to the law providing for the government of cities having a population of twenty thousand or more inhabitants, in accordance with section 10, Article XI, of the Constitution of this state. [L. '90, p. 143, § 23; 1 H. C., § 515.]

The remainder of this chapter, down to and including § 8982, contains the act of March 24, 1890, relating to the charters of cities of twenty thousand inhabitants and upward, except as repealed, with additional acts.

See *supra*, § 5568, city depositaries, duty of city treasurer.

Cited in 25 Wash. 304.

§ 8948. [7493-1.] Powers of Cities of First Class.

The form of the organization and the manner and mode in which cities of the first class shall exercise the powers, functions and duties which are or may be given by law to such cities, with respect to their own government shall be as provided in the charters thereof. [L. '11, p. 54, § 1.]

See, also, § 8966, *infra*, and notes.

Cited in 80 Wash. 230; 87 Wash. 585; 88 Wash. 623; 92 Wash. 334.

This act does not impliedly repeal section 11082, *infra*, conferring upon the mayor and council the power to grant franchises; since the power to grant franchises is a sovereign power which may be delegated by the state and is not within the act of 1911 relating to powers exercised by cities, "with respect to their own government": *Dolan v. Puget Sound Traction, Light & Power Co.*, 72 Wash. 343, 130 Pac. 353.

This act, and section 11319, having delegated to cities of the first class the right to levy taxes without providing how or in what manner the power is to be exercised, recourse must be had to the provisions of the city charter; and Seattle Charter, Article IV, section 18, having expressly provided that the city council shall have power "by ordinance and not otherwise" to provide for the assessing, levying and collecting of taxes, a tax levy cannot be authorized by resolution, and is subject to the veto power

of the mayor; especially in view of this section: *New Seattle Chamber of Commerce v. Seattle*, 88 Wash. 620, 153 Pac. 351.

An ordinance granting a telephone franchise in a city of the first class is subject to the referendum provision of the city charter requiring all franchise ordinances to be submitted to referendum, notwithstanding section 11352, *infra*, relating to telephone companies, which provides that the streets of the city cannot be used by a telephone company without the consent of the "city council," in view of section 8966, subdivision 7, giving a first-class city, as a corporate entity as distinguished from its "legislative authority," power to regulate and control the use of streets and authorize or prohibit the use of electricity in or upon the same, and to prescribe the terms and conditions upon which the same may be used; the city charter having been adopted pursuant to this section: *State ex rel. Walker v. Superior Court*, 87 Wash. 582, 152 Pac. 11.

§ 8949. [7493-2.] Recall of Elective Officers.

Any such city may provide in its charter for the recall of elective officers and for direct legislation by the people upon any matter within

the scope of such powers, functions or duties of any such city by the initiative and referendum. [L. '11, p. 54, § 2.]

Recall in General: See Remington's Digest, Mun. Corp., § 63; Hilzinger v. Gillman, 56 Wash. 228, 105 Pac. 471, 21 Ann. Cas. 305; Mills v. Nickeus, 81 Wash. 409, 142 Pac. 1145.

Grounds: See Remington's Digest, Mun. Corp., § 64; State ex rel. Winsor v. Mayor and Council, 10 Wash. 4, 38 Pac. 761; State ex rel. Niggle v. Kirkwood, 15 Wash. 298, 46 Pac. 331; Pybus v. Smith, 80 Wash. 65, 141 Pac. 203, Ann. Cas. 1915A, 1145, L. R. A. 1915A, 285.

— **Restrictions of Civil Service Laws or Rules:** See Remington's Digest, Mun. Corp., § 65; Easson v. Seattle, 32 Wash. 405, 73 Pac. 496; Foster v. Hindley, 72 Wash. 657, 131 Pac. 197; State ex rel. Cole v. Coates, 74 Wash. 35, 132 Pac. 727; State ex rel. Voris v. Seattle, 74 Wash. 199, 133 Pac. 11; State ex rel. Burris v. Seattle, 82 Wash. 464, 144 Pac. 695; State ex rel. Gilmur v. Seattle, 83

Wash. 91, 145 Pac. 61; Kessler v. Seattle, 93 Wash. 192, 160 Pac. 423; Jenkins v. Gronen, 98 Wash. 128, 167 Pac. 916.

— **Proceedings and Review:** See Remington's Digest, Mun. Corp., § 66; State ex rel. Heilbron v. Van Brocklin, 8 Wash. 557, 36 Pac. 495; State ex rel. Winsor v. Mayor and Council, 10 Wash. 4, 38 Pac. 761; Hilzinger v. Gillman, 56 Wash. 228, 105 Pac. 471, 21 Ann. Cas. 305; State ex rel. Rose v. Hindley, 67 Wash. 240, 121 Pac. 447; State ex rel. Voris v. Seattle, 74 Wash. 199, 133 Pac. 11.

— **Operation and Effect:** See Remington's Digest, Mun. Corp., § 67; State ex rel. Gill v. Byrne, 31 Wash. 213, 71 Pac. 746; Price v. Seattle, 39 Wash. 376, 81 Pac. 847; Ryan v. Hadley, 43 Wash. 232, 86 Pac. 398.

§ 8950. [7493-3.] Act Applies to Any Charter.

This act shall apply to any charter of any such city heretofore adopted or approved by the electors thereof at an election duly held. [L. '11, p. 54, § 3.]

§ 8951. [7494.] May Frame Charter for Its Own Government.

Any city now having, or which may hereafter have, a population of twenty thousand or more inhabitants may frame a charter for its own government. [L. '90, p. 215, § 1; 1 H. C., § 516.]

See *infra*, § 8955 et seq., amendments to charter.

Cited in 1 Wash. 486, 488; 2 Wash. 138, 142, 144, 592; 6 Wash. 144, 145; 8 Wash. 156; 14 Wash. 293; 28 Wash. 726, 730; 46 Wash. 522; 56 Wash. 230; 68 Wash. 689; 104 Wash. 469.

Special Charters: See Remington's Digest, Mun. Corp., § 5, and cases cited.

Construction of: See Remington's Digest, Mun. Corp., § 23, and cases cited.

Validity of statute conferring power on municipality to adopt new charter or amend existing one: *Ann.*

Cas. 1913C, 788; *Ann. Cas.* 1918E, 580.

Grant of power to amend municipal charter as constituting invalid delegation of legislative powers. *Ann. Cas.* 1915D, 105.

Powers conferred on municipality by constitutional grant of local self-government. *Ann. Cas.* 1914D, 969.

Self-executing provisions of Constitution relating to municipal corporations. 7 *Ann. Cas.* 629; 18 *Ann. Cas.* 201; *Ann. Cas.* 1914C, 1117.

§ 8952. [7495.] Enumerating Inhabitants—Evidence as to City's Population.

The legislative authority of any such city now incorporated, or which may hereafter be incorporated under the laws of this state, may, by ordinance, provide for the appointment, by the mayor thereof, of such number of persons as shall be designated in such ordinance, to make an enumeration of all persons residing in the corporate limits of such city. The persons so appointed shall, before entering upon their duties, take an oath for the faithful performance thereof, and shall, within five days after their

appointment, proceed, within their respective districts, to make an enumeration of all persons residing therein, with their names and places of residence, and immediately upon the completion of such enumeration, shall make return thereof, upon oath, to the legislative authority of said city, who shall, at their next meeting, or as soon thereafter as practicable, canvass and certify the same, and if it shall appear that the whole number of persons residing within the corporate limits of such city is twenty thousand or more, the mayor and clerk shall certify, under the corporate seal of said city, the number so ascertained, to the secretary of the state, who shall file the same in his office, and when so filed such certificate shall be conclusive evidence of the population of said city. [L. '90, p. 216, § 2; 1 H. C., § 517.]

See supra, § 8933, classification, how determined.

See supra, § 8936, advancement of second class city to first class.

§ 8953. [7496.] Formation of Charter.

If it shall appear by such certificate that the population of such city is twenty thousand or more, the legislative authority thereof shall, within twenty days after the filing of such certificate, provide by ordinance for an election to be held therein for the purpose of electing fifteen freeholders, who shall have been residents of said city for the period of at least two years preceding their election, and qualified electors, for the purpose of framing a charter for such city. It shall be the duty of the persons so elected to convene within ten days after their election and frame a charter for such city, and within thirty days thereafter they, or a majority of their number, shall submit such charter to the legislative authority of such city, who shall, within five days thereafter, cause the same to be published in two daily newspapers published in said city for thirty days, and upon the affidavit of the publisher of each of said papers being filed with the clerk of said city, that the said proposed charter has been published in full in said papers as above provided, which affidavit shall be made immediately after the last publication of such proposed charter, the legislative authority of such city shall, within five days thereafter, provide for the submission thereof to the qualified voters of said city, and shall, for that purpose, give at least ten days' notice in each election district of said city, by publishing such notice in two daily newspapers published in said city, and by causing the same to be posted at each polling place in the several election districts thereof, of an election, which notice shall specify the object for which said election is called. Said election shall be governed by the laws regulating and controlling elections in said city. The form of ballot at such election shall be, "For the proposed charter," "Against the proposed charter." In submitting such proposed charter, or amendments thereto, any alternate article or proposition may be presented for the choice of the voters of such city, and may be voted on separately without prejudice to others. In submitting such amendment, article, or proposition, the form of ballot shall be, "For article No. — of the charter," "Against article No. — of the charter." [L. '90, p. 216, § 3; 1 H. C., § 518.]

See infra, § 8955 et seq., revision, etc., of charter, proceedings to effect.

Cited in 4 Wash. 144, 147; 7 Wash. 138; 16 Wash. 387. Under this section the action of the city clerk in affixing numbers to the

amendments, both in the election notice and on the ballots is a sufficient compliance with the law, although the city council may have failed to number the

proposed amendments: *Pierce v. City Clerk of Spokane*, 7 Wash. 132, 34 Pac. 428.

§ 8954. [7497.] Returns—Certificate of Election—Charter-book.

The officers conducting such election shall make returns thereof within the time and in the manner provided by the election laws of such city, and the vote thereof shall be canvassed and the result declared as provided by such laws; and if upon such canvass it shall be found that a majority of the votes so cast at such election were cast in favor of the ratification of such charter, the same shall become the organic law of said city, and shall supersede any existing charter, and all amendments thereto, and all special laws inconsistent therewith, when authenticated, recorded, and attested as hereinafter provided. The mayor of said city shall thereupon attach to said charter a certificate in substance as follows:—

I, —, mayor of the city of —, do hereby certify that, in accordance with the terms and provisions of section 10 of article XI of the constitution, and of chapter — of the laws of said state, the — of the city of —, duly caused a — election to be held on the — day of —, 18—, for the purpose of electing fifteen freeholders to prepare a charter for the city of —; that due notice of such election was given in the manner provided by law; that on the — day of —, 18—, said election was held, and the votes cast thereat were duly canvassed by the legislative authority of said city, and the following named persons were declared duly elected to prepare and propose a charter for said city, to wit: —. That thereafter, to wit, on the — day of —, 18—, said board of freeholders duly returned a proposed charter for the city of —, signed by the following members thereof, to wit: —. That thereafter such proposed charter was duly published in two daily newspapers in said city and of general circulation therein, to wit: For a period of — days, said publication in each of said papers, commencing on the — day of —, 18—. That thereafter, on the — day of —, 18—, at a — election, duly called by the legislative authority of said city, the proposed charter was submitted to the qualified electors thereof, and the returns of such election were duly canvassed by the legislative authority thereof, at a meeting held on the — day of —, 18—, and the result of said election was found to be as follows: For said proposed charter, — votes; against said proposed charter, — votes. Majority for said proposed charter, — votes. Whereupon, the said charter was declared duly ratified by a majority of the qualified electors voting at said election. And I further certify that the foregoing is a full, true, and complete copy of the proposed charter so voted upon and ratified as aforesaid.

In testimony whereof, I hereunto set my hand and affix the corporate seal of said city, at my office, this — day of —, 18—.

Attest:

—, —,

Clerk of the City of —.

—, —,
Mayor of the City of —.
[Corporate Seal.]

Such charter shall immediately thereafter be recorded by the clerk of said city in a book to be provided and kept for that purpose, and known as

the charter-book of the city of —, and when so recorded shall be attested by the clerk and mayor of said city, under the corporate seal thereof, and thereafter any and all amendments to said charter shall be in like manner recorded and attested, and when so recorded and attested, all courts in this state shall take judicial notice of said charter and all amendments thereto. [L. '90, p. 217, § 4; 1 H. C., § 519.]

§ 8955. [7498.] Revision of Charter.

Upon the petition of one-fourth of the qualified electors, as shown by the last general city election, of any city of the first class, the city council of said city shall, and without such petition the city council in joint session may, cause an election to be held, at which election there shall be chosen by the qualified electors of said [city] fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election, and qualified electors, whose duty it shall be to commence within ten days after their election, and within sixty days thereafter prepare a new charter for said city by altering, changing, revising, adding to or repealing their existing charter, together with any amendments thereto, and file the same with the city clerk. [L. '95, p. 42, § 1.]

See *infra*, § 8963, direct amendments.

Cited in 13 Wash. 18; 59 Wash. 671.

Permitting amendments to a freeholder's charter to be adopted by a vote of the people is not an unwarranted delegation of legislative power: *State ex rel. Mullen v. Doherty*, 16 Wash. 382, 47 Pac. 958, 58 Am. St. Rep. 39.

Under the Seattle charter, the city council may submit amendments to the city charter to a vote of the people by a resolution: *Ehrhardt v. Seattle*, 33 Wash. 664, 74 Pac. 827.

An election to choose fifteen freeholders to prepare a new city charter for cities of the first class, under this section must be called by the city council within a reasonable time after due petition

therefor is filed, in view of the failure of the statute to fix the time, and of the next section, requiring the proposed charter to be submitted at an election to be called "immediately": *State ex rel. Lambert v. Superior Court*, 59 Wash. 670, 110 Pac. 622.

Where a city council is petitioned on May 24th to call an election to choose fifteen freeholders to prepare a new city charter, under this section, it is an abuse of discretion for the city council to fix the date therefor upon the next general election to be held on the first Tuesday of May, 1911; and mandamus lies to compel the council to fix upon a reasonable time: *State ex rel. Lambert v. Superior Court*, 59 Wash. 670, 110 Pac. 622.

§ 8956. [7499.] Submission to Electors.

Such new, altered, changed and revised charter shall be submitted to the qualified electors of said city at an election to be immediately called therefor, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of the said city, and shall become the organic law thereof and supersede any existing charter, including amendments thereto, and all special laws inconsistent with said charter. [L. '95, p. 42, § 2.]

Cited in 59 Wash. 671; 70 Wash. 358.

§ 8957. [7500.] Publication.

Such proposed charter shall be published in two daily newspapers in said city for at least thirty days prior to the day of submitting the

same to the electors for their approval as in the last section provided. [L. '95, p. 43, § 3.]

§ 8958. [7501.] Notice of Election.

All elections in this chapter authorized shall only be had upon notice, which notice shall specify the object of calling such election and shall be given for at least ten days before the day of election in all election districts of said city. [L. '95, p. 43, § 4.]

Cited in 4 Wash. 147.

§ 8959. [7502.] Election, How Held.

Said elections may be general or special elections and, except as herein provided, shall be governed by the law regulating and controlling general or special elections in said city. [L. '95, p. 43, § 5.]

Cited in 59 Wash. 671, 673.

§ 8960. [7502-1.] Canvass of Returns.

Within five (5) days after the date of any general or special municipal election in any city of the first class, the legislative body of any such city shall convene at the hour fixed by its rules for regular meetings and shall open and canvass the returns of such election and shall declare and certify the result of such election. [L. '11, p. 110, § 1.]

§ 8961. [7502-2.] No Change in Charters.

Nothing herein shall be deemed to affect any provision now or hereafter incorporated in any charter or ordinances of any such city providing a manner for the canvass of, and declaration of the result of, the votes cast at such elections. [L. '11, p. 111, § 2.]

§ 8962. [7503.] Officers—Effect of Revision upon.

All houses, boards or offices abolished or dispensed with by said altered, changed and revised charter, together with the emoluments thereof, shall cease to exist from and after the adoption of such altered, changed and revised charter; and any new offices created shall be filled by appointment of the mayor until the next general election and subject to such ratification and control by the city council as may be provided in such altered, changed and revised charter. [L. '95, p. 43, § 6.]

§ 8963. [7504.] Direct Amendments of City Charters.

On petition of a number (equal to fifteen per cent of the total number of votes cast at the last preceding municipal election) of qualified voters of any municipality having adopted a charter under the laws of this state, asking the adoption of a specified charter amendment, providing for any matter within the realm of local affairs, or municipal business, the said amendment shall be submitted to the voters at the next regular municipal election, occurring thirty days or more after said petition is filed, and if approved by a majority of the local electors of the municipality voting upon it, such amendment shall become a part of the charter organic law governing such municipality. [L. '03, p. 393, § 1.]

Cited in 50 Wash. 159; 53 Wash. 436; 62 Wash. 316; 70 Wash. 354, 360.

New Charter, Reorganization and Amendments: See Remington's Digest, Mun. Corp., §§ 18—21, and cases cited.

Affidavits verifying the genuineness of the signatures of petitioners for the submission of charter amendments to a vote of the people are not competent evidence of the qualifications of the signers: *Hindman v. Boyd*, 42 Wash. 17, 84 Pac. 609.

It is the duty of the city council to determine in the first instance the qualifications of the signers of a petition for the submission of charter amendments to a vote of the people: *Hindman v. Boyd*, 42 Wash. 17, 84 Pac. 609.

The power to amend a city charter, under this section is limited to the extent that amendments cannot be adopted that override a general statute of the legislature which deals directly and specifically with the subject in question: *Benton v. Seattle Elec. Co.*, 50 Wash. 156, 96 Pac. 1033.

This section does not repeal section 8977, *infra*, providing that the legislative powers of such city shall be vested in a mayor and city council, although it modifies and grants larger and more extensive legislative powers than those granted by section 8977: *Walker v. Spokane*, 62 Wash. 312, 113 Pac. 775, Ann. Cas. 1912C, 194.

§ 8964. [7505.] **Signing and Filing of Petition.**

The petition containing the demand for the submission of the proposed charter amendment shall be filed with the city clerk, and each signer shall write his occupation and residence after his signature, and the genuineness of the signatures on such paper must be attested by the affidavit of a qualified voter. [L. '03, p. 394, § 2.]

§ 8965. [7506.] **Construction.**

This act shall not be construed to deprive city councils from submitting proposed charter amendments to the voters as is now provided, but shall be held to afford a concurrent and additional method for proposing and submitting amendments to the charter of any municipality having a charter. [L. '03, p. 394, § 3.]

"Act" in this section refers to §§ 8963—8965.

See *supra*, § 8955, revision of charter.

Cited in 70 Wash. 360.

§ 8966. [7507.] **Powers Enumerated.**

Any such city shall have power—

1. To provide for general and special elections, for questions to be voted upon, and for the election of officers;

2. To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

3. To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

4. To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed ten per centum of the value of the taxable property therein, to be ascertained by the last assessment for city purposes previous to the incurring of such indebtedness;

5. To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

6. To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

7. To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

8. To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

9. To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

10. To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

11. To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same;

12. To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

13. To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

14. To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or to authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

15. To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the

erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

16. To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all venders in such city, and to provide for the inspection thereof;

17. To erect and establish hospitals and pesthouses, and to control and regulate the same;

18. To erect and establish work houses and jails, and to control and regulate the same, and to provide for the working of prisoners confined therein;

19. To provide for establishing and maintaining reform schools for juvenile offenders;

20. To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such per centum of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

21. To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

22. To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

23. To provide for the prevention and extinguishment of fires, and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

24. To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

25. To regulate the manner in which stone, brick, and other buildings, party-walls, and partition fences shall be constructed and maintained;

26. To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

27. To control, regulate, or prohibit the anchorage, moorage, and landing of all water crafts and their cargoes within the jurisdiction of the corporation;

28. To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

29. To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

30. To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

31. To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

32. To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors: Provided, that no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

33. To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same: Provided, that no license shall be granted to continue for longer than one year from the date thereof;

34. To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

35. To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

36. To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city; but such punishment shall in no case exceed the punishment provided by the laws of the state for misdemeanors;

37. To project or extend its streets over and across any tide lands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

38. To provide in their respective charters for a method to propose and adopt amendments thereto. [L. '90, p. 218, § 5; 1 H. C., § 520.]

See Const., Art. XI, § 10, municipal corporations, organization of.

See Const., Art. VII, § 9, power conferred to make local improvements by special assessments, and powers of taxation.

See § 290, existence of city, how pleaded.

See § 291, supra, ordinances, how pleaded.

See notes to § 4116, municipal warrants, payment of, etc.

See supra, §§ 5599—5604, bonds to refund city indebtedness.

See supra, § 5609 et seq., provisions for validating indebtedness.

See supra, § 5617 et seq., provisions for funding indebtedness.

See supra, § 5624 et seq., temporary funds for current expenses.

See supra, § 6085 et seq., of boards of health.

See infra, § 8981, additional powers.

See infra, § 9204, regulation of bicycles.

See infra, § 9292 and notes, dedication of streets and highways.

See infra, § 9293 and notes, streets over tide lands.

See infra, § 9333, and notes, damages caused by change of street grade.

See infra, § 11318, provisions for assessment and collection of taxes in cities of the first class.

Cited in 2 Wash. 142; 4 Wash. 65, 66, 136; 6 Wash. 144, 146, 335, 550; 7 Wash. 156, 158; 9 Wash. 255; 14 Wash. 293; 20 Wash. 349; 21 Wash. 552; 24 Wash. 57; 25 Wash. 304, 623; 26 Wash. 410; 28 Wash. 504, 726, 731; 35 Wash. 305, 306; 37 Wash. 276; 38 Wash. 394; 43 Wash. 144; 44 Wash. 401, 402; 46 Wash. 552, 680; 53 Wash. 436; 55 Wash. 220, 221; 57 Wash. 228; 61 Wash. 445, 446; 62 Wash. 108, 110, 115, 685; 64 Wash. 329, 690; 65 Wash. 106; 66 Wash. 529; 67 Wash. 150; 68 Wash. 689; 69 Wash. 338, 656; 71 Wash. 164; 73 Wash. 56, 58; 74 Wash. 278, 326; 75 Wash. 657; 77 Wash. 222, 225, 230; 78 Wash. 358, 587; 79 Wash. 510; 80 Wash. 228; 83 Wash. 327, 328; 85 Wash. 290; 86 Wash. 318, 319; 87 Wash. 586, 587, 588; 89 Wash. 159; 94 Wash. 428; 95 Wash. 615; 101 Wash. 604; 102 Wash. 107; 103 Wash. 45, 46, 413; 104 Wash. 468; 106 Wash. 97; 111 Wash. 76; 113 Wash. 307.

GOVERNMENTAL POWERS AND FUNCTIONS IN GENERAL: See Remington's Digest, Mun. Corp., §§ 22—27, and cases cited. See, also:

Authority to Manufacture Ice: State ex rel. Hill v. Port of Seattle, 104 Wash. 634, 177 Pac. 671, 180 Pac. 137.

Powers of Council—Judicial Supervision: Twichell v. Seattle, 106 Wash. 32, 179 Pac. 127.

Ordinances and By-laws in General: See Remington's Digest, Mun. Corp., §§ 38—53, and cases cited. See, also:

Referendum—Emergent Acts—Charter—Construction—Powers of City: Arnold v. Carroll, 106 Wash. 241, 179 Pac. 801.

Property: See Remington's Digest, Mun. Corp., §§ 92, 92-1, and cases cited.

Contracts in General: See Remington's Digest, Mun. Corp., §§ 93—110, and cases cited.

Preliminary Proceedings and Ordinances or Resolutions: See Remington's Digest, Mun. Corp., §§ 129—146, and cases cited.

Contracts: See Remington's Digest, Mun. Corp., §§ 147—181, and cases cited. See, also:

§ 158. Schools and School Districts—Contractor's Bonds—Persons Secured—Supplies: Western Hardware & Metal Co. v. Maryland Casualty Co., 105 Wash. 54, 177 Pac. 703, 181 Pac. 700.

§ 159-1. Contractor's Bonds—"Supplies"—Notice: Ledingham v. Blaine, 105 Wash. 253, 177 Pac. 783.

§ 172. Payment of Compensation—Special Assessments—Liability of General Fund—Effect of Mutual Mistake—Change in Method of Payment: Pratt v. Seattle, 111 Wash. 104, 189 Pac. 565.

§§ 174, 176. Payment of Condemnation Awards—Special Assessments—Liability of General Fund—Powers of City: Pratt v. Seattle, 111 Wash. 104, 189 Pac. 565.

§ 180. Contracts—Subletting—Violation of Charter—Breach of Contract—Rights and Liabilities of Parties: Dyer Bros. Golden West Iron Works v. Pederson, 112 Wash. 390, 192 Pac. 1002.

§ 181. Sales—Remedies on Contractor's Bonds—Materialmen Under Conditional Sales Contract: Allis-Chalmers Mfg. Co. v. Ellensburg, 108 Wash. 533, 185 Pac. 811.

POLICE POWER AND REGULATIONS—Nature and Exercise of Power and Regulations in General: See Remington's Digest, Mun. Corp., §§ 310—312, and cases cited.

Public Health: See Remington's Digest, Mun. Corp., § 313, and cases cited.

This section authorizes a city to provide for light and air spaces at the rear of apartment houses: *Bebb v. Jordan*, 111 Wash. 73, 189 Pac. 553, 9 A. L. R. 1035.

Highways and Vehicles: See Remington's Digest, Mun. Corp., § 314, and cases cited.

Fire Limits and Fire Protection: See Remington's Digest, Mun. Corp., § 315, and cases cited.

See, also, Regulation of Buildings—Reasonableness—Health and Fire Protection—Ordinances—Powers of City: *Bebb v. Jordan*, 111 Wash. 73, 189 Pac. 553, 9 A. L. R. 1035.

Keeping and Use of Animals: See Remington's Digest, Mun. Corp., §§ 316, 317, and cases cited.

Nuisances, in General, and Abatement: See Remington's Digest, Mun. Corp., §§ 318, 326, and cases cited.

Garbage: See Remington's Digest, Mun. Corp., § 319, and cases cited.

REGULATION OF OCCUPATIONS: See Remington's Digest, Mun. Corp., §§ 320—324, and cases cited.

Licenses and Permits: See Remington's Digest, Mun. Corp., § 325, and cases cited.

See, also, State ex rel. *Makris v. Superior Court*, 113 Wash. 296, 193 Pac. 845.

It is within the general police power of a city to legislate upon the subject of weights and measures to prevent frauds: *Seattle v. Goldsmith*, 73 Wash. 54, 131 Pac. 456; *Spokane v. Arnold*, 73 Wash. 256, 131 Pac. 815.

As the power to "regulate" the sale of intoxicating liquor implies the power of partial prohibition, an anti-treating ordinance prohibiting the sale of intoxicating liquors in licensed saloons to be drunk on the premises by any other person than the one buying the same, is within the power conferred by this section: *Tacoma v. Keisel*, 68 Wash. 685, 124 Pac. 137, 40 L. R. A. (N. S.) 757.

VIOLATION AND ENFORCEMENT OF POLICE REGULATIONS: See Remington's Digest, Mun. Corp., §§ 329—340, and cases cited. See, also:

§ 333. Jurisdiction—Police Court—Continuance—Venue: State ex rel. *Kiggins v. Hadley*, 104 Wash. 648, 177 Pac. 655.

§ 336. Violation of Health Ordinance—Complaint—Sufficiency: *Roslyn v. Pavlinovich*, 112 Wash. 306, 192 Pac. 885.

USE AND REGULATION OF PUBLIC PLACES, PROPERTY AND WORKS—Streets and Other Public Ways: See Remington's Digest, Mun. Corp., §§ 341—394, and cases cited. See, also:

§ 354. Licenses—Regulation of Jitneys—Vehicles—License Tax: State ex rel. *Schafer v. Spokane*, 109 Wash. 360, 186 Pac. 864.

§§ 379, 380. Crossings and Passing—Negligence—Evidence—Sufficiency: *Zuccone v. Main Fish Co.*, 104 Wash. 441, 177 Pac. 314; *Clark v. Wilson*, 108 Wash. 127, 183 Pac. 103; *Saari v. Wells Fargo Express Co.*, 109 Wash. 415, 186 Pac. 898; *Stubbs v. Molberget*, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; *Schwalen v. Fuller & Co.*, 107 Wash. 476, 182 Pac. 592, 187 Pac. 366; *Clark v. Wilson*, 108 Wash. 127, 183 Pac. 103; *Kane v. Nakamoto*, 113 Wash. 476, 194 Pac. 381.

— Violation of Ordinance: *Allen v. Schultz*, 107 Wash. 393, 181 Pac. 916, 6 A. L. R. 676; *Chilberg v. Parsons*, 109 Wash. 90, 186 Pac. 272; *Burlie v. Stephens*, 113 Wash. 182, 193 Pac. 684; *Elmberg v. Pielow*, 113 Wash. 589, 194 Pac. 549.

"Obstructions": *Schwalen v. Fuller & Co.*, 107 Wash. 476, 182 Pac. 592, 187 Pac. 366.

— Right of Way—Ordinances: *Hull v. Crescent Manufg. Co.*, 109 Wash. 129, 186 Pac. 322; *Olsen v. Peerless Laundry*, 111 Wash. 660, 191 Pac. 756.

— Violation of Ordinance—Negligence—Proximate Cause—Instructions: *Burlie v. Stephens*, 113 Wash. 182, 193 Pac. 684.

§ 381. Rate of Speed: *Luger v. Windell*, 110 Wash. 22, 187 Pac. 407; *Burlie v. Stephens*, 113 Wash. 182, 193 Pac. 684.

— Ordinances—Application to Peace Officers: State v. *Gorham*, 110 Wash. 330, 188 Pac. 457, 9 A. L. R. 365.

— Defenses—Failure to Obtain Permit: *Koch v. Seattle*, 113 Wash. 583, 194 Pac. 572.

§ 383. Contributory Negligence: *Zuccone v. Main Fish Co.*, 104 Wash. 441, 177 Pac. 314; *Tyrell v. Legee*, 105 Wash. 438, 178 Pac. 467; *Stubbs v. Molberget*, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; *Clark v. Wilson*, 108 Wash. 127, 183 Pac. 103; *Walmsley v. Pickrell*, 109 Wash. 262, 186 Pac. 847; *Noot v. Hunter*, 109 Wash. 343, 186 Pac. 851; *Crowl v. West Coast Steel Co.*, 109 Wash. 426, 186 Pac. 866; *Noyes v. Katsuno*, 111 Wash. 529, 191 Pac. 419; *Burlie v. Stephens*, 113 Wash. 182, 193 Pac. 684.

— Use of Street Between Intersections: *Collins v. Nelson*, 112 Wash. 71, 191 Pac. 819.

§ 384. — **Proximate and Concurring Cause:** *Ross v. Smith & Bloxom*, 107 Wash. 493, 182 Pac. 582; *Reed v. Tacoma Railway & Power Co.*, 110 Wash. 334, 188 Pac. 409; *Collins v. Nelson*, 112 Wash. 71, 191 Pac. 819; *Molitor v. Blackwell Motor Co.*, 112 Wash. 279, 191 Pac. 1103; *Carlisle v. Hargreaves*, 112 Wash. 383, 192 Pac. 894; *Burlie v. Stephens*, 113 Wash. 182, 193 Pac. 684.

§ 388. **Negligent Driving—Evidence—Admissibility:** *Chilberg v. Parsons*, 109 Wash. 90, 186 Pac. 272.

— **Proximate Cause:** *Reed v. Tacoma Railway & Power Co.*, 110 Wash. 334, 188 Pac. 409.

§ 389. **Evidence—Sufficiency—Crossings and Passing—Negligence:** *Zuccone v. Main Fish Co.*, 104 Wash. 441, 177 Pac. 314; *Saari v. Wells Fargo Express Co.*, 109 Wash. 415, 186 Pac. 898; *Noyes v. Katsuno*, 111 Wash. 529, 191 Pac. 419; *Bulger v. Yamaoka*, 111 Wash. 646, 191 Pac. 786; *Olsen v. Peerless Laundry*, 111 Wash. 660, 191 Pac. 756; *Elmberg v. Pielow*, 113 Wash. 589, 194 Pac. 549.

— **Violation of Ordinance—Evidence:** *Allen v. Schultz*, 107 Wash. 393, 181 Pac. 916, 6 A. L. R. 676; *Olsen v. Peerless Laundry*, 111 Wash. 660, 191 Pac. 756; *Collins v. Nelson*, 112 Wash. 71, 191 Pac. 819; *Elmberg v. Pielow*, 113 Wash. 589, 194 Pac. 549.

§ 390. **Questions for Jury:** *Moore v. Roddie*, 106 Wash. 548, 180 Pac. 879; *Stubbs v. Molberget*, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; *Clark v. Wilson*, 108 Wash. 127, 183 Pac. 103; *Truva v. Goodyear Tire & Rubber Co.*, 113 Wash. 413, 194 Pac. 386.

— **Violation of Ordinance—"Obstructions":** *Schwalen v. Fuller & Co.*, 107 Wash. 476, 182 Pac. 592, 187 Pac. 366.

— **Cause of Accident:** *Ross v. Smith & Bloxom*, 107 Wash. 493, 182 Pac. 582; *Carlisle v. Hargreaves*, 112 Wash. 383, 192 Pac. 894.

§ 391. **Contributory Negligence—Question for Jury:** *Westervelt v. Schwabacher*, 104 Wash. 418, 176 Pac. 545; *Stubbs v. Molberget*, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; *Clark v. Wilson*, 108 Wash. 127, 183 Pac. 103; *McClure v. Wilson*, 109 Wash. 166, 186 Pac. 302; *Noot v. Hunter*, 109 Wash. 343, 186 Pac. 851; *Crowl v. West Coast Steel Co.*, 109 Wash. 426, 186 Pac. 866; *Olsen v. Peerless Laundry*, 111 Wash. 660, 191 Pac. 756.

§ 392. **Instructions—Mutual Rights and Duties:** *Schwalen v. Fuller & Co.*, 107 Wash. 476, 182 Pac. 592, 187 Pac. 366; *Clark v. Wilson*, 108 Wash. 127, 183 Pac. 103.

— **Proximate and Concurring Cause:** *Ross v. Smith & Bloxom*, 107 Wash. 493,

182 Pac. 582; *Molitor v. Blackwell Motor Co.*, 112 Wash. 279, 191 Pac. 1103.

— **Violation of Ordinance:** *Chilberg v. Parsons*, 109 Wash. 90, 186 Pac. 272.

— **Degree of Care—Duty of Driver at Alley Intersections:** *Bulger v. Yamaoka*, 111 Wash. 646, 191 Pac. 786.

— **Contributory Negligence:** *Reames v. Heymansson*, 109 Wash. 132, 186 Pac. 325; *Crowl v. West Coast Steel Co.*, 109 Wash. 426, 186 Pac. 866; *Burlie v. Stephens*, 113 Wash. 182, 193 Pac. 684.

— **Violation of Ordinance—Negligence—Proximate Cause—Instructions:** *Burlie v. Stephens*, 113 Wash. 182, 193 Pac. 684.

Public Places and Property: See *Remington's Digest, Mun. Corp.*, §§ 395—398, and cases cited.

TORTS—Governmental Powers and Acts or Omissions of Officers or Agents: See *Remington's Digest, Mun. Corp.*, §§ 399—410, and cases cited. See, also:

§ 399. **Permit for Explosives in Harbor—Ordinances—Construction:** *Ehrlich-Harrison Co. v. Seattle*, 110 Wash. 344, 188 Pac. 500.

§§ 405—407. **Parks—Construction of Dam:** *Nelson v. Spokane*, 104 Wash. 219, 176 Pac. 149.

— **Functions of Police Officers—Abatement of Nuisance—Liability—Pleading:** *Hotel Cecil Co. v. Seattle*, 104 Wash. 460, 177 Pac. 347.

— **Acts or Omissions of Officers—Permit for Explosives in Harbor—Ordinances—Construction:** *Ehrlich-Harrison Co. v. Seattle*, 110 Wash. 344, 188 Pac. 500.

— **Health Quarantine—Governmental Functions—Torts of Officers—Liability:** *Franklin v. Seattle*, 112 Wash. 671, 192 Pac. 1015.

— **Defects or Obstructions in Streets and Other Public Ways:** See *Remington's Digest, Mun. Corp.*, §§ 411—471, and cases cited. See, also:

§ 420. **Defective Sidewalk—Negligence—Evidence—Sufficiency:** *Hanson v. Seattle*, 108 Wash. 586, 185 Pac. 581.

— **Negligence of City—Unprecedented Floods:** *Neer v. Sumas*, 109 Wash. 663, 187 Pac. 337.

§ 423. **Obvious Dangers—Duty of City:** *Thompson v. Bellingham*, 112 Wash. 583, 192 Pac. 952.

§ 435. **City's Notice of Defect:** *Fisher v. Anacortes*, 109 Wash. 191, 186 Pac. 271.

§ 437. **Defects—Unusual Dangers—Barriers—Instructions:** *Thompson v. Bellingham*, 112 Wash. 583, 192 Pac. 952.

§ 442. **Contributory Negligence—Knowledge of Defective Sidewalk:** *Titus v.*

Montesano, 106 Wash. 608, 181 Pac. 43; Fisher v. Anacortes, 109 Wash. 191, 186 Pac. 271.

§ 444. **Assumption of Risks**—Choice of Ways—Instructions: Thompson v. Bellingham, 112 Wash. 583, 192 Pac. 952.

§§ 445, 446. **Liability of Abutters**: Spokane v. Fisher, 106 Wash. 378, 180 Pac. 139.

§ 448. **Pleading**—Answer—Sufficiency: Hanson v. Seattle, 108 Wash. 586, 185 Pac. 581.

§ 464. **Question for Jury**—In General: Hanson v. Seattle, 108 Wash. 586, 185 Pac. 581.

§ 470. **Instructions**—Negligence—Presumption—Contributory Negligence—Notice of Defects: Schaefer v. Spokane International R. Co., 110 Wash. 316, 188 Pac. 530; Fehler v. Montesano, 110 Wash. 143, 188 Pac. 5.

— Assumption of Risks—Choice of Ways: Thompson v. Bellingham, 112 Wash. 583, 192 Pac. 952.

— Unusual Dangers—Barriers: Thompson v. Bellingham, 112 Wash. 583, 192 Pac. 952.

Defects or Obstructions in Sewers, Drains and Watercourses: See Remington's Digest, Mun. Corp., §§ 472—479, and cases cited. See, also:

§§ 473, 479. **Defective Sewers**—Actions for Injuries—Contributory Negligence: Woolworth Co. v. Seattle, 104 Wash. 629, 177 Pac. 664.

— Water-mains—Damage to Property—Actions—Estoppel—Petition for Change of Grade—Effect of Stipulations—Negligence—Instructions: Rainier Heat & Power Co. v. Seattle, 113 Wash. 95, 193 Pac. 233.

— Negligence—Degree of Care—Instructions: Rainier Heat & Power Co. v. Seattle, 113 Wash. 95, 193 Pac. 233.

— Contributory Negligence—Failure to Maintain Drains—Instructions—Question for Jury: Rainier Heat & Power Co. v. Seattle, 113 Wash. 95, 193 Pac. 233.

Condition or Use of Public Buildings and Other Property: See Remington's Digest, Mun. Corp., §§ 480, 481, and cases cited.

§ 8967. [7507-1.] **Power to Lease Wharf Privileges.**

The legislative authorities of any city of the first class in this state are authorized and empowered to rent or lease the whole or any part of any wharf or privileges thereon owned by such city, in such manner as may be prescribed by general ordinance, for periods not exceeding one year. [L. '11, p. 338, § 1.]

§ 8968. [7507-2.] **Validating Operation of Electric Railways.**

All acts and things of any city of the first class heretofore done or performed by the legislative authority thereof in any way relating to, or in the acquisition by gift, or in the operation of, any electric railway partly within and partly without the corporate limits of said city for the transportation of freight and passengers, are in all respects hereby cured, validated, ratified and confirmed and declared legal and valid and such cities are hereby authorized and empowered to maintain, conduct and operate such railways so acquired by gift. [L. '15, p. 317, § 1.]

§ 8969. [7508.] **Hours in Offices, Summer Months.**

All elective and appointive officers of counties of the first class and all elective and appointive officers in cities of the first class are permitted to close any branch or branches of their respective offices at 1 o'clock P. M. on Saturday of each week, during the months of June, July, August and September. [L. '09, p. 638, § 1.]

§ 8970. [7509.] **Redistricting into Wards.**

Whenever, by the charter of any city of the first class, within the state of Washington, the common council of such city shall be forbidden from redistricting and redividing such city into wards except at stated

intervals or periods, and such city shall have neglected or failed to redistrict or redivide such city into wards at any such interval or period, it shall be lawful for the common council of such city, by ordinance, to redistrict or redivide such city into wards at any time thereafter: Provided, that there shall be not more than one redistricting or redivision into wards within the period specified in such charter provision. [L. '03, p. 267, § 1.]

§ 8971. [7510.] Railroads in Streets.

Any city of the first class shall have the power by ordinance to authorize the location, construction and operation of railroads in, along, over and across any highway, street, alley or public place in such city, for such term of years and upon such conditions as the city council of such city may by ordinance prescribe, notwithstanding any provisions of the charter of such city limiting the terms of franchises, or requiring such franchises to contain a provision that such city shall at any time have the right to appropriate, by purchase, the property of the corporation receiving any franchise, license, privilege or authority: Provided, however, that nothing herein contained shall be construed as applying to street railroads or railroads operated in connection with street railroads, in and along the streets of such city. [L. '07, p. 57, § 1.]

Cited in 62 Wash. 108, 109, 115; 71 Wash. 164; 83 Wash. 327, 328, 330.

See Remington's Digest, Mun. Corp., §§ 360—369, and cases cited.

Power to Grant Franchises in Streets:

See, also, Remington's Digest, Street Railways, §§ 1—4, and cases cited.

§ 8972. [7511.] Removal of Garbage, etc.

Any city of the first class is hereby empowered to provide for the filling and closing of cesspools and for the removing of garbage, debris, grass, weeds and brush on property in such city. [L. '07, p. 170, § 1.]

See, also, *infra*, § 9488.

§ 8973. [7512.] City may Prescribe Manner of Assessment.

Such city may prescribe by general ordinance the mode and manner of assessing, levying and collecting the tax or assessments upon such property for any such filling and closing of cesspools and the removing of garbage, debris, grass, weeds and brush, and provide that such charge shall be a lien on the property upon which such work is done and that the same shall be collected in such manner as shall be prescribed by such ordinance. [L. '07, p. 170, § 2.]

§ 8974. [7516a.] Extension of Plant, How Determined.

When any plan, system, or proposed extension thereof which shall have been adopted or specified for furnishing any water supply to any city of the first class in this state, shall after such adoption be deemed to be insufficient or inadequate for any reason, the said city may determine the fact by resolution of its council, and may thereupon by ordinance submit to the electors of such city any new plan or system, or any desired or proposed change in the adopted plan or system, or any adopted extension thereof, which new plan, system or proposed change of extension shall

be clearly specified in general terms in said ordinance, and stated upon the ballot in general but clear terms sufficient for common understanding. [L. '95, p. 18, § 1.]

The submission of a proposition to the voters of a city for an extensive addition to its system of waterworks and for a change from a pumping to a gravity system does not come within the purview of this section: *Faulkner v. Seattle*, 19 Wash. 320, 53 Pac. 365.

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to springs which it purchased with an existing system, and which it held for years as a reserve supply, is not a change in the plan of the city's water system which need be authorized by a vote of the people within the contemplation of this section: *Griffin v. Tacoma*, 49 Wash. 524, 95 Pac. 1107.

§ 8975. [7516b.] Election.

Such proposed changes shall be submitted at either any annual or special city election for ratification or rejection, to the qualified voters of such city, of which election notice shall be regularly given in the paper doing the city printing, by publication for thirty days immediately preceding such election: Provided, that no such change shall be adopted unless assented to by at least three-fifths of all the electors voting on such proposition. [L. '95, p. 18, § 2.]

§ 8976. [7516c.] Water Fund, Diverted.

Upon the adoption of such proposed change the fund devoted to the original plan, system or extension may thereupon be and is diverted to be used for the plan, system or extension so changed and adopted, in proportion as the said plan, system or extension is changed and adopted. [L. '95, p. 18, § 3.]

§ 8977. [7517.] Legislative Powers—Election and Compensation of Officers.

The legislative powers of any city, organized under the provisions of this act, shall be vested in a mayor and a city council, to consist of such number of members, and to have such powers, as may be provided for in its charter, who, together with such other elective officers as may be provided for in such charter, shall be elected at the times, in such manner, and for such terms, and shall perform such duties and receive such compensation, as may be prescribed in such charter: Provided, that the first election of officers to serve under the provisions of said charter shall be held at the time of the submission of such proposed charter to the legal voters of such city. Said election shall be held and the returns made and canvassed according to the general provisions of the election laws of said city; but any division of the city into wards, and any division of wards into precincts, made in said proposed charter, shall be in force at said election. Immediately after the vote of such election shall have been canvassed, and the result thereof declared, if it shall appear that a majority of the votes cast at such election were cast in favor of the ratification of such proposed charter, the mayor and city clerk of said city shall thereupon issue notice to each officer elected at such election, notifying him of his election, and within ten days after the issuance of such notice the officers so elected shall qualify as provided in such charter, and on the 10th day after the issuance of such notice, at 12 o'clock M., of said day, the officers so elected and qualified shall enter upon the discharge of the duties of the offices to which they have been

elected, and at such time said charter shall be attested as recorded and go into effect. [L. '90, p. 223, § 6; 1 H. C., § 521.]

"This act" embraces §§ 8951—8954, 8966, 8977—8982, inclusive.

See notes to § 8966.

Cited in 8 Wash. 176; 12 Wash. 291; 42 Wash. 30, 31; 50 Wash. 161; 53 Wash. 435; 55 Wash. 239; 56 Wash. 233; 62 Wash. 315, 319.

LEGISLATIVE CONTROL OF MUNICIPAL ACTS, RIGHTS AND LIABILITIES: See Remington's Digest, Mun. Corp., §§ 28—32-2, and cases cited.

PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY—Meetings, Rules and Proceedings in General: See Remington's Digest, Mun. Corp., §§ 33—37, and cases cited.

Nature, Appointment, Eligibility and Term of Office: See Remington's Digest, Mun. Corp., §§ 54—61, and cases cited.

Compensation, Increase or Diminution and Recovery: See Remington's Digest, Mun. Corp., §§ 68—72, and cases cited. See, also:

Salary—Increase During Term—Statutes: State ex rel. Port of Seattle v. Wardall, 107 Wash. 606, 183 Pac. 67.

Authority, Powers and Liabilities: See

Remington's Digest, Mun. Corp., §§ 73—77, and cases cited.

Municipal Departments and Officers Thereof: See Remington's Digest, Mun. Corp., §§ 78—86, and cases cited.

AGENTS AND EMPLOYEES: See Remington's Digest, Mun. Corp., §§ 87—91, and cases cited. See, also:

§ 88. Appointment — Civil Service Rules—Transfer from Other Department—Increase of Compensation: State ex rel. La Grave v. Seattle, 111 Wash. 340, 190 Pac. 906.

§ 90. Removal—Civil Service Rules: State ex rel. La Grave v. Seattle, 109 Wash. 629, 187 Pac. 339.

Delegation of power to committee by governing body of municipality. 15 Ann. Cas. 1095.

Legality of meeting of municipal council held outside of municipal limits. Ann. Cas. 1912B, 646.

Legality of action by majority of quorum of council. Ann. Cas. 1916E, 274.

§ 8978. [7517-1.] Recall of Elective Officials—Nomination of Candidates.

Whenever any city of the first class has heretofore, or shall hereafter, include in its city charter any provision for the recall of elective city officials, or any of them, at an election to be held for that purpose, if said charter provisions shall not specifically prescribe the method of nomination and placing the names of candidates upon the official ballot for use at said election, then and in that case, such candidates may be nominated in the following manner:

By filing a certificate of nomination with the city comptroller or clerk of such city, signed by electors of said city equaling in number not less than five per cent of the total vote cast for the incumbent against whom the recall is directed, which said certificate of nomination shall be substantially in the following form:

"CERTIFICATE OF NOMINATION."

We, the undersigned duly qualified citizens, voters and electors in and of the city of —, in — county, state of Washington, do hereby nominate —, of — county, Washington, engaged in the — business, and whose address is —, — as —, candidate for the office of — of the city of —, — county, Washington to be voted for at a special election to be held in the city of — on the — day of —, A. D. 19—.

We hereby certify that we, and each of us, undersigned, do and have hereby made the foregoing nomination, and that the said nominee is a duly qualified elector and voter in and of said city, county and state.

Name	Residence	Business	Address	Street	Number.
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Provided, that said signatures need not be all appended to one paper. Each elector signing a certificate of nomination shall add to his signature his place of residence, including street and number, his business and address. Said certificate of nomination shall be filed with the city comptroller or clerk of said city, at least ten days before the election to be held, and when so filed the comptroller or city clerk shall put the name of the nominees or candidates upon the official ballot, and in all cases the name of the incumbent of the office against whom the recall election is directed shall be printed upon the said official ballot at the head of the list of names thereon, without any petition in his behalf, unless in writing he should notify the city comptroller or city clerk to the contrary, and all the names upon said official ballot shall be printed without party or political designation, And provided, nothing in this act contained shall be held to prevent any city which had the right to make or amend its own charter from making and prescribing in such charter any provision for a system of nomination at recall elections which shall thereupon, control and direct its city officials in the preparation of the official ballot for use at such elections. [L. '11, p. 1, § 1.]

Removal of City Officers: See Remington's Digest, Mun. Corp., §§ 61—67, and cases cited.

A city council has power to abolish an office and distribute the duties among other employees of the office, thereby making a saving without an addition to the force, where the civil service rules gave the incumbent no preference right of employment over those assigned to perform his duties: State ex rel. La Grave v. Seattle, 109 Wash. 629, 187 Pac. 339.

A city, by its charter, may create a Civil Service Commission with power to finally decide not only questions of fact, but whether particular acts constitute sufficient cause for the dismissal of an

employee; and the courts will not inquire into the facts where there was full opportunity to be heard and evidence was heard tending to prove the charge: State ex rel. Wolcott v. Boyington, 110 Wash. 622, 188 Pac. 777.

The dismissal of a city fireman for circulating a petition for the removal of the chief of the fire department is not so frivolous as to warrant a court in holding that the Civil Service Commission did not exercise its honest judgment: State ex rel. Wolcott v. Boyington, 110 Wash. 622, 188 Pac. 777.

Election for recall of officer. **Ann. Cas.** 1916A, 1165.

Form of ballot for recall of plural officers. **Ann. Cas.** 1916D, 208.

§ 8979. [7517-2.] Challengers for Recall Elections.

Whenever any city has heretofore, or shall hereafter, include in its city charter any provision for the recall of elective city officials, or any of them, at an election to be held for that purpose, each candidate at such election shall have the right to designate a challenger or challengers at each polling place: Provided, however, that this act shall not effect the right to have or to be challengers as otherwise provided by law. [L. '11, p. 7, § 1.]

§ 8980. [7517-3.] Rights and Privileges.

Such challenger or challengers shall have the right to be within the polling place as fully as the election officers and during the whole time the polls are open and until the ballots are all counted, including the right to examine the ballot-box before any ballot is deposited therein: Provided, however, that there shall be no more than one challenger for each candidate in a polling place at any one time. [L. '11, p. 7, § 2.]

§ 8981. [7518.] Additional Powers.

Any city adopting a charter under the provisions of this act shall have all the powers which are now or may hereafter be conferred upon incorporated towns and cities by the laws of this state, and all such powers as are usually exercised by municipal corporations of like character and degree, whether the same shall be specifically enumerated in this act or not. [L. '90, p. 224, § 7; 1 H. C., § 522.]

“This act”: See note to § 8977.

See supra, §§ 950, 951, actions by and against public corporations.

Cited in 2 Wash. 142, 143—146; 14 Wash. 292; 25 Wash. 305; 62 Wash. 316, 319; 77 Wash. 224, 231.

§ 8982. [7519.] Liberal Construction.

The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act, but the same shall be liberally construed for the purpose of carrying out the objects for which this act is intended. [L. '90, p. 224, § 8; 1 H. C., § 523.]

See note to § 8977.

Cited in 28 Wash. 730; 46 Wash. 31, 522; 56 Wash. 234.

§ 8983. [7519-1.*] Local Improvement Funds—Diversion—Refund.

Whenever any city of the first class shall levy and collect moneys by sale of bonds or otherwise for any local improvement by special assessment therefor, the same shall be carried in a special fund to be used for said purpose, and no part thereof shall be transferred or diverted to any other fund or use: Provided, however, that any fund remaining after the payment of the whole cost and expense of such improvement, in excess of the total sum required to defray all the expenditures by the city on account thereof, shall be refunded on demand to the amount of such overpayment: Provided further, that this section shall not be deemed to require the refunding of any balance heretofore or hereafter left in any local improvement fund after the payment of all outstanding obligations issued against such fund, where such balance accrues from any saving in interest or from penalties collected upon delinquent assessments, but any such balance may be turned into the general fund or otherwise disposed of, as the legislative authority of such city may direct by ordinance. [L. '17, p. 216, § 1; L. '15, p. 43, § 1.]

§ 8984. [7519-2.] Proceeds of Bonds for Special Improvements.

That whenever the issuance or sale of bonds or other obligations of any city of the first class shall have been authorized by vote of the people, as provided by any existing charter or laws, for any special improvement or purpose, the proceeds of the sale of such bonds including premiums if any shall be carried in a special fund to be devoted to the purpose for which such bonds were authorized, and no portion of such bonds shall be transferred or diverted to any other fund or purpose: Provided, that nothing in this act shall be held to prevent the transfer to the interest and redemption fund of any balance remaining in the treasury after the completion of such improvement or purpose so authorized: And

provided, further, that nothing in this act shall prevent the city council from disposing of such bonds, or any portion thereof, in such amounts and at such times as it shall direct, but no such bonds shall be sold for less than par. [L. '15, p. 43, § 2.]

§ 8985. [7519-3.] Liability for Violation of Act.

Any ordinance, resolution, order or other action of any city council, board or officer, and every city warrant or other instrument in writing made in violation of any of the provisions of this act shall be void, and every officer, agent or employee of any such city, or member of the city council, or other board thereof, and every private person or corporation who shall knowingly commit any violation of this act, or knowingly aid in such violation, shall be liable to the city concerned for all moneys so transferred, diverted or paid out, which liability shall also attach to and be enforceable against the official bond (if any) of any such officer, agent, employee, member of city council or board. [L. '15, p. 44, § 3.]

"Act," refers to §§ 8983—8985.

§ 8986. Fund Guaranteeing Local Improvement Bonds.

Any city of the first class may, by ordinance, create a fund for the purpose of guaranteeing, to the extent of such fund and in the manner hereinafter provided, bonds issued against local improvement districts for the payment of local improvements therein. [L. '17, p. 576, § 1.]

§ 8987. Amount of Fund.

Such fund shall be designated as "local improvement guarantee fund," and shall at no time exceed a sum equal to five per cent of the outstanding bond obligations of the local improvement districts of such city issued subsequent to the passage of such ordinance. [L. '17, p. 576, § 2.]

§ 8988. Tax Levies for Fund—Subrogation of City—Warrants.

After the creation of such guarantee fund, the city shall levy from time to time, as other taxes are levied, such sums as may be needed to meet the financial requirements of the fund; and whenever the city shall have paid under its guarantee any sum on account of principal or interest on the bonds of any district, it shall be subrogated to all the rights of the holders of such bonds or interest coupons so paid, and such bonds or coupons and the proceeds thereof shall become part of the guarantee fund.

Warrants drawing interest at a rate not to exceed six per cent may be issued against said fund to meet any financial liabilities accruing against it, but at the time of making its annual budget and tax levy the city shall provide for the levying of a sum sufficient, with the other resources of the fund, to pay warrants so issued during the preceding fiscal year. [L. '17, p. 576, § 3.]

§ 8989. Limitation on Power to Order Local Improvements.

The city council or other legislative body of any city electing to establish a guarantee fund under the provisions of this act shall, in

addition to the limitations imposed by section 9363, have no power to order an improvement where the estimated cost thereof, together with all other outstanding and unpaid local improvement assessments against the property included in the district, exceeds in amount sixty-five per cent of the assessed valuation of the property in such district as made for general taxation purposes at the last assessment: Provided, however, that nothing in this section shall prevent the city council of any city, if otherwise authorized by law, from ordering by a unanimous vote of the council the construction of sanitary sewers where, in the judgment of the council, the same are necessary for public health, and assessing a part or the whole of the cost thereof to the benefited property in the manner provided by law. [L. '17, p. 576, § 4.]

§ 8990. Nonliability of City Beyond Guarantee Fund.

Neither the holder nor owner of any bond issued under the provisions of this act shall have any claim therefor against the city by which the same is issued, except for payment from the special assessments made for the improvement for which said bonds was issued, and except as against the said local improvement guarantee fund of such city. The remedy of the holder or owner of such bond, in case of nonpayment, shall be confined to the enforcement of such assessment and to the said guarantee fund. A copy of this section shall be plainly written, printed or engraved on each bond issued and guaranteed hereunder, and the writing, printing or engraving of this section upon any such bond shall be deemed sufficient compliance with the requirements of section 9405. [L. '17, p. 577, § 5.]

§ 8991. Act Cumulative—Repealing Ordinance to be Ratified by Voters.

This act is cumulative and intended to supplement the existing laws in relation to the making of local improvements and the levying and collection of assessments to pay therefor, and nothing herein contained shall limit any powers now possessed by cities of the first class, or hereafter conferred upon them by law: Provided, that whenever such city shall have elected to establish said guarantee fund, that such city shall have no power to repeal the same unless such repealing ordinance be passed upon by the voters of such city. After such repealing ordinance shall have been passed by such city council, the same shall be submitted to the voters of such city at a general or special election, and shall not become effective unless ratified by a majority of the voters voting thereon. [L. '17, p. 577, § 6.]

§ 8992. [7520.] Designation of Police Justice.

Within ten days after such [each general] election the mayor of the city shall appoint one of the justices [of the peace] so elected the police justice or police judge of such city, who shall before entering upon the duties of his office as police judge, give such additional bond for the faithful performance of his duties as the city council may by ordinance direct. [L. '99, p. 135, § 2.]

Bracketed words inserted: See § 7564, *supra*.

See *supra*, §§ 7562—7576, justices of the peace in cities.

Jurisdiction of. See notes to §§ 44, 46, *supra*.

Cited in 56 Wash. 143; 92 Wash. 375.

The term of office is coextensive with the term for which the justice was elected, and the mayor has no power of removal: *State ex rel. Evans v. Superior Court*, 92 Wash. 375, 159 Pac. 84.

§ 8993. [7521.] Jurisdiction of Police Judge—Appeals.

The police judge so appointed, in addition to his powers as justice of the peace, shall have exclusive jurisdiction over all offenses defined by any ordinance of the city, and all other actions brought to enforce or recover any license, penalty or forfeiture declared or given by any such ordinance, and full power to forfeit bail bonds and issue execution thereon and full power to forfeit cash bail, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinance, and pronounce judgment in accordance therewith: Provided, that for the violation of a criminal ordinance no greater punishment shall be imposed than a fine of one hundred dollars, or imprisonment not to exceed thirty days, or by both such fine and imprisonment. In the trial of actions brought for the violation of any city ordinance, no jury shall be allowed. All civil or criminal proceedings before such police judge and judgments rendered by him shall be subject to review in the superior court of the proper county by writ of review or appeal. [L. '99, p. 135, § 3; L. '03, p. 34, § 1.]

Cited in 78 Wash. 589.

A police judge has jurisdiction to both fine and imprison for violations of ordinances under this section: *State v. Oliver*, 78 Wash. 586, 139 Pac. 626.

This section, providing for the right of appeal from the police court to the supe-

rior court, carries the right to a full trial by jury, and is not limited merely to review for error: *Spokane v. Smith*, 37 Wash. 583, 79 Pac. 1125.

Parole powers of police judge. *Ann. Cas.* 1915C, 565.

§ 8994. [7522.] Criminal Process.

All criminal process issued by such police judge shall be in the name of the state of Washington and run throughout the state, be directed to the chief of police, marshal or other police officer of any city or to any sheriff or constable in the state and shall be served by him. [L. '99, p. 136, § 4.]

§ 8995. [7523.] Prosecutions in Name of City.

All prosecutions for the violation of any city ordinance shall be conducted in the name of the city, and may be upon the complaint of any person. [L. '99, p. 136, § 5.]

§ 8996. [7524.] Clerk for Police Judge.

The police judge of such city shall have power at any time to appoint a clerk to assist such police judge in clerical work incidental to the performance of his duties, who shall be paid such salary out of the funds of the city as the city council may by ordinance determine. [L. '99, p. 136, § 6; L. '03, p. 34, § 2.]

See *supra*, § 7583, clerk for justice of the peace.

§ 8997. [7525.] Salary of Police Justice.

The salary of such police judge to be paid in addition to the salary paid to justices of the peace in cities of the first class, shall be fixed by

the city council by ordinance and such additional salary shall be paid wholly out of the fund of the city, in equal monthly installments. The city shall provide a suitable place for holding court by such police judge and pay all the expense of maintaining the same. [L. '99, p. 136, § 7.]

See supra, §§ 7567—7575, salaries of justices of the peace.

§ 8998. [7526.] Costs and Fees.

In all civil and criminal cases arising from the violations of city ordinances tried by such police judge he shall charge up as costs in each case the same fees as are charged by justices of the peace for like services in every action, and all fees so charged and collected by, and all fines and forfeitures paid to, such police judge shall belong to and be paid over by him weekly, to the city. [L. '99, p. 136, § 8.]

See supra, § 7577 et seq., costs and fees of justices of the peace.

§ 8999. [7527.] Precedence of Cases.

Such police judge shall in the conduct of the business of the court give preference to cases arising under ordinances of the city; then to prosecutions for violation of the criminal laws of the state of Washington within the city; then to civil causes coming before him upon change of venue from the other justice of the peace in the city. No change of venue shall be allowed from such police judge in actions brought for violations of city ordinances. [L. '99, p. 136, § 9.]

§ 9000. [7528.] Temporary Absence—Appointment of Judge Pro Tempore.

In case of the temporary absence or inability of the police judge to act the mayor shall appoint, from among the practicing attorneys qualified electors of the city, a police judge pro tempore, who, before entering upon the duties as such, shall take and subscribe an oath as other judicial officers and while so acting he shall have all the powers of the police judge; Provided, however, such appointment shall not continue for a longer period than the absence or disability of the police judge. Such police judge pro tempore to receive compensation at the rate of five dollars a day to be paid by the city. [L. '99, p. 137, § 11.]

Cited in 33 Wash. 34.

CHAPTER VIII.

VIADUCTS, ETC., IN CITIES OF THE FIRST CLASS.

§ 9001. [7579.] Authorized—Contiguous Property Benefited may be Assessed.

Any city of the first class shall have power to provide for the construction, maintenance and operation upon public streets and upon the extensions and connections thereof over intervening tide lands to and across any harbor reserves, waterways, canals, rivers, natural water-courses and other channels, any bridges, drawbridges, viaducts, elevated roadways and tunnels or any combination thereof together with all necessary approaches thereto, with or without street railway tracks thereon or therein, and to make any and all necessary cuts, fills, or other

construction, upon, in or along such streets and approaches as a part of any such improvement, and to order any and all work to be done which shall be necessary to complete any such improvement. The word "approaches" as used in this section shall include any arterial highway or highways or streets connecting with any such bridge, drawbridge, viaduct, elevated roadway or tunnel, or combination thereof, which are necessary to give convenient access thereto or therefrom from any portion of the improvement district which may be specially benefited by such improvement and which is liable to assessment for such improvement.

Whenever it is desired to pay the whole or any portion of the cost and expense of any such improvement by special assessments, the council or other legislative body of such city shall in the ordinance ordering such improvement fix and establish the boundaries of the improvement district, the property within which is to bear such assessment, which district shall include as near as may be, all the property specially benefited by such improvement. [L. '11, p. 493, § 1; Cf. L. '09, Ex. Sess., p. 49, § 1.]

§ 9002. [7580.] Assessment District—Hearing.

Any such improvement may be initiated by the city council, or other legislative body of such city, by a resolution, declaring its intention to order such improvement, which resolution shall set forth the nature and territorial extent of such proposed improvement, shall specify and describe the boundaries of such proposed improvement district and notify all persons who may desire to object thereto to appear and present such objections at a meeting of the council specified in such resolution and directing the board of public works, or other proper board, officer or authority of such city, to submit to such council at or prior to the date fixed for such hearing the estimated cost and expense of such improvement, and a statement of the proportionate amount thereof which should be borne by the property within the proposed improvement district, and a statement of the aggregate assessed valuation of the real property exclusive of improvements, within said district, according to the valuation last placed upon it for purposes of general taxation. Such resolution shall be published in at least two (2) consecutive issues of the official newspaper of such city, the date of the first publication to be at least thirty days prior to the date fixed by such resolution for hearing before such council.

Upon such hearing, or upon any adjournment thereof, such council shall have power to amend, change, extend, or contract the boundaries of such proposed improvement district as specified in such resolution, and to consider and determine all matters in relation to such proposed improvement, and, upon the conclusion of such hearing, or any adjournment thereof, shall have power by ordinance to order such improvement to be made and to adopt, fix and establish the boundaries of the improvement district. The action of such council in ordering such improvement, or in abandoning the same, and in fixing and establishing the boundaries of such improvement district shall be final and conclusive. Any such ordinance may be passed upon majority vote of the council or other legislative body of such city. Such ordinance may provide for the construc-

tion of such improvement in sections, the letting of separate contracts for each such section, and, in case the same is made in sections, separate assessment-rolls to defray the cost and expense of any such section of such improvement may be prepared, and the amounts thereon appearing as finally determined, may be levied and assessed against real property within such improvement district. The provisions of law, charter and ordinance of any such city, relating to supplemental assessments, reassessments and omitted property shall be applicable to any improvement authorized in this act.

The city council, or other legislative body of such city, shall by general ordinance, make provision for hearing any objections in writing, to any assessment-roll for such improvement filed with the city clerk or comptroller at a prior date to the hearing thereon. Any right of appeal to the superior court now provided by law to be taken from any local improvement assessment levied and assessed by any such city, may be exercised, within the time and in the manner therein provided, by any person so objecting to any assessment levied and assessed for any improvement authorized in this act. [L. '11, p. 494, § 2. Cf. L. '09, Ex. Sess., p. 49, § 2.]

§ 9003. [7581.] Method—Limit—Procedure.

Such council may prescribe by general ordinance, the mode and manner in which the charge upon property in such local improvement district shall be assessed and determined for the purpose of paying the cost and expense of establishing and constructing such improvement: Provided, however, that no assessment shall be levied on any such district, the aggregate of which is a greater sum than twenty-five per cent of the assessed value of all the real property in such district according to the last equalized assessment thereof for general taxation: And provided, further, that there shall be, in all cases, an opportunity for a hearing upon objections to the assessment-roll by the parties affected thereby, before the council as a board of equalization, which hearing shall be after publication of a reasonable notice thereof, such notice to be published in such manner and for such time as may be prescribed by ordinance. At such hearing, or at legal adjournments thereof, such changes may be made in such assessment-roll as the city council may find necessary to make the same just and equitable. Railroad rights of way shall be assessed for such benefits as shall inure or accrue to the owners, lessees or operators of the same, resulting or to result from the construction and maintenance of any such improvement, whether such right of way lie within the limits of any street or highway or not; such assessment to lie against the franchise rights when such right of way is within such street or highway. When such assessment-roll shall have been finally confirmed by the city council, the charges therein made shall be and become a lien against the property or franchise therein described, paramount to all other liens (except liens for assessments and taxes) upon the property assessed from the time the assessment-roll shall be placed in the hands of the collector. [L. '09, Ex. Sess., p. 50, § 3.]

§ 9004. [7582.] Operation by City—Leases—Rentals.

As a part of the original construction of any improvement herein authorized, or afterward as an alteration or renewal thereof, any such city, notwithstanding any charter provision to the contrary, may, at its own cost, construct, maintain and operate street railway tracks in the roadway thereof, and may provide electric power for the propulsion of cars, and may lease the use of such tracks and power for the operation of street-cars or interurban railways; or such city may authorize any operator of the street or interurban railways to construct and furnish such street railway tracks and electric power and use the same for street or interurban purposes, under lease or franchise ordinance: Provided, that no such lease or franchise shall be exclusive, but shall at all times reserve the right to such city to permit other lines of street or interurban railway to use such street railway tracks in common with any preceding lessee or grantee, upon equal terms. The rate of lease or use of such street railway tracks for streets or interurban cars shall be as fixed by the legislative authority of such city, but shall not be less than one mill for each passenger carried, or ten cents for each freight-car moved over such improvement. The income from such charges, rental and leasing shall be used wholly for the maintenance, repair and betterment of said improvement and the extinguishment of any debt incurred by said city in constructing the same. [L. '09, Ex. Sess., p. 51, § 4.]

§ 9005. [7583.] Act Cumulative.

The provisions and remedies provided by this act are and shall be cumulative of existing provisions and remedies, and nothing in this act contained shall be held to repeal any provision of the existing law or of any charter of any city upon the subject matter thereof, but such existing law or charter provision shall continue in full force and effect, and it shall be optional with the city authorities to proceed under either such existing law, charter provision or act. [L. '09, Ex. Sess., p. 51, § 5.]

CHAPTER IX.

SECOND CLASS CITIES.

§ 9006. [7584.] Rights, Privileges and Powers.

Every municipal corporation of the second class shall be entitled, the city of — (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places and in all proceedings whatever; and shall have and use a common seal, and alter the same at pleasure; may purchase, receive, have, take, hold, lease, use and enjoy property of every name or description, and control and dispose of the same for the common benefit. Wherever any city of the third class having the requisite population to entitle it to advancement has heretofore pursued or attempted to pursue the requisite statutory steps for the advancing of such city from the third class to the second class, such city shall be considered as a city of the second class, notwithstanding any irregularities or omissions in pursuing the statutes providing for its

advancement, and all steps and proceedings so taken shall be and the same are hereby validated. [L. '07, p. 623, § 1.]

For former laws repealed hereby, see L. '90, pp. 143—172, §§ 24—91; Bal. Code, §§ 841—907.

See supra, § 5635 et seq., taxation and disposition of funds in.

See supra, § 8883 et seq., organization and incorporation of cities.

See supra, § 8894, boundaries, how altered.

See supra, § 8909, consolidation, how effected.

See supra, § 8932 et seq., classification of cities and towns.

See supra, § 8935, municipal corporations as bodies politic, etc.

See supra, § 8937, et seq., advancement of cities.

Cited in 64 Wash. 74.

§ 9007. [7585.] Officers Enumerated.

The officers of such city shall consist of a mayor, twelve councilmen, a street commissioner, a treasurer, city clerk, police judge, city attorney, chief of police, and whenever a free public library and reading-room is established therein, five trustees thereof; and the council may also create by ordinance the offices of superintendent of irrigation, city engineer, harbor-master, poundkeeper, city jailer, chief of the fire department, and whenever a paid fire department shall be established in such city, a chief engineer and one or more assistant engineers, and any other offices necessary to carry out the provisions of this act, and for whose election or appointment no provision is made, and the city council may by ordinance prescribe the duties of all said officers and fix their compensation, except as hereinafter provided, subject to the limitations herein contained. [L. '07, p. 623, § 2.]

“Act” in this and the following sections refers to this chapter.

Cited in 71 Wash. 594.

§ 9008. [7586.] Terms of Office.

The term of office of mayor in cities of the second class shall be for the period of two years and until his successor is elected and qualified. Members of the city council shall hold office for the term of two years: Provided, that whenever at the city election in any such city next ensuing after this act shall go into effect, more than six councilmen are to be elected, then only six of such councilmen shall hold office for the term of two years and the balance shall hold office for the term of one year, so that thereafter, as far as practicable, there shall be six members of the city council to elect at each ensuing city election. Whenever, at the election next ensuing after the passage of this act, more than six councilmen are to be elected in any such city, the members of the city council so elected shall after their election determine by lot among themselves, which shall serve for the long term and which shall serve for the short term. [L. '07, p. 624, § 3; L. '09, p. 414, § 4.]

Terms of certain officers not fixed: See next section, providing for annual elections.

§ 9009. [7587.] Municipal Elections.

A general municipal election shall be held annually in such city on the first Tuesday after the first Monday of April of each year, provided

that the first general municipal election to be held under this act shall be held on the first Tuesday after the first Monday of April, 1908. The officers elected at such municipal election shall take office on the first Wednesday of May following their election. Elective officers of such city at the time this act goes into effect, whose terms of office would expire in January, 1908, shall hold office until the first Wednesday of May, 1908, and elective officers of such city in office at the time this act goes into effect, whose terms of office would expire in January, 1909, shall hold office until the first Wednesday of May, 1909. Every elective officer of such city shall hold office until his successor is elected and qualified. [L. '07, p. 624, § 4.]

§ 9010. [7588.] Elections to be Held Under General Law.

All municipal elections held under the provisions of this act shall be conducted according to the general election laws of this state, as far as practicable: Provided, that any qualified voter of such city, duly registered for the general county or state election next preceding any municipal election, general or special, shall be qualified to vote at such municipal election without further registration. No person shall be qualified to vote at such election unless he shall be a qualified elector of the county and shall have resided in such city for at least thirty days next preceding such election. The council shall give such notice of each election as may be prescribed by ordinance, and shall appoint boards of election and fix their compensation, and shall establish election precincts and polling places. [L. '07, p. 624, § 5.]

§ 9011. [7589.] Canvass of Votes.

On the Tuesday following the election the city council shall convene and publicly canvass the result, and shall direct the issuance of certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal and highest number of votes for any one of the offices voted for, the city clerk shall give notice to the several persons so having the highest and equal number of votes to attend at the next or some subsequent meeting of the council to be held within two weeks thereafter, and the city clerk shall at the time fixed proceed publicly to decide by lot which of the persons having an equal number of votes shall be declared duly elected. In case the clerk be an interested person such duty shall devolve upon the mayor. If all of the persons having the highest and equal number of votes shall be present at the meeting at which the council shall canvass the result of the election, the matter may then and there be decided by lot as herein provided, without the necessity of notice. If the city council from any cause fail to meet on the day named, then it shall be the duty of the council to canvass the election returns at the next regular or special election meeting held by the said council. [L. '07, p. 625, § 6.]

§ 9012. [7590.] Contested Elections.

The city council as constituted at the time of the election, or as it may be constituted between that date and the first Wednesday of May following, shall hear and determine any and all contested elections of any

and all city offices. The city council shall have power by general ordinance to prescribe rules and regulations for the hearing of contested elections of city officers, but proceedings before the city council in cases of contested elections shall conform as near as may be to the provisions of sections 5366—5382, *supra*, relating to contested elections. [L. '07, p. 625, § 7.]

§ 9013. [7591.] Mayor to Appoint.

The police judge, city attorney, street commissioner, chief of police, library trustees, as well as all other officers provided for in this act, whose election or appointment is not otherwise provided for, shall be appointed by the mayor, subject to confirmation by the city council. If the city council shall refuse to confirm any nomination of the mayor, then he shall within ten days thereafter nominate another person to fill the office and he may continue to nominate until his nominee is confirmed. If the mayor fails to make another nomination for the same office within ten days after the rejection of a nominee, then the city council shall elect a suitable person to fill the office during the term. The affirmative vote of not less than seven councilmen shall be required to confirm any nomination made by the mayor. Whenever a vacancy shall occur in an appointive office, the vacancy for the unexpired term shall be filled by appointment in the same manner as at the beginning of the term, except as may be otherwise expressly provided in this act. [L. '07, p. 626, § 8.]

Cited in 71 Wash. 594.

§ 9014. [7592.] Eligibility to Office.

No person shall be eligible to hold any office in such city unless such person be a resident and elector of the city at the time of his election or appointment. No person shall be eligible to hold the office of mayor, member of the city council, street commissioner, treasurer, city clerk, city attorney, police judge or chief of police unless he be a resident and elector of such city at the time of his election or appointment and unless he shall have resided in the city for at least one year next preceding the date of his election or appointment. [L. '07, p. 626, § 9.]

§ 9015. [7593.] Oath and Bond of Officers.

Each officer of the city shall before entering upon the duties of his office, take the oath of office, and such as may be required to give bonds, shall file the same, duly approved, within ten days after receiving notice of his election or appointment; or if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed; but, if anyone, either elected or appointed to office, fail for ten days to qualify as required by law, or to enter upon his duties at the time fixed by law or the orders of the city council, then such office shall become vacant; or if such officer shall absent himself from such city without the consent of the council for three consecutive weeks or shall openly neglect or refuse to discharge his duties, the said council may declare such office vacant: Provided, that the penalty for absence from the city shall not apply to

such officers as serve without salary or without compensation. The city council shall fix the amount of all official bonds, and may designate what officers shall be required to give bonds in addition to those required to give bonds by this act. [L. '07, p. 626, § 10.]

§ 9016. [7594.] Official Bonds.

The clerk, treasurer, city attorney, chief of police, police judge and street commissioner, respectively, before entering upon the duties of their respective offices shall each execute a bond to the city in such penal sum as the city council by ordinance may determine, conditioned for the faithful performance of their duties, including in the same bond the duties of all offices of which he is made by this act ex-officio incumbent. All official bonds shall be approved by the city council and when so approved shall be filed with the city clerk, except the bond of the city clerk, which shall be filed with the mayor. All the provisions of any law of this state relating to official bonds of officers shall apply to such bonds, except as herein otherwise provided. No city officer shall be eligible as a surety upon any bond running to the city as obligee. The city council shall have power, whenever by it deemed expedient, to require a new or additional official bond of any officer. [L. '07, p. 627, § 11.]

§ 9017. [7595.] Salaries.

The mayor and members of the city council shall receive such salaries as may be fixed by the city council by ordinance: Provided, that the salary of the mayor shall not exceed the sum of five hundred dollars per annum, nor shall the salary of any member of the city council exceed the sum of three hundred dollars per annum: Provided, that a deduction of five dollars for each absence shall be made from the salary of each member of the city council who shall be absent from any regular meeting of the city council. The city council shall also by ordinance fix the salaries of the city treasurer, city clerk, city attorney, police judge, street commissioner and chief of police, subject to the limitations hereinafter contained. The salary of all other officers mentioned in this act, and not herein expressly provided for, shall be fixed by the city council, except that the library trustees shall serve without salary or compensation. The salary or compensation of no officer of such city shall be increased or diminished during his term of office, nor shall any such officer be allowed any extra or additional compensation, either directly or indirectly, for the rendition of services that the city council have the power to require such officer to perform by virtue of his office. The salaries of all city officers shall be payable monthly. [L. '07, p. 627, § 12.]

§ 9018. [7596.] Officers shall not be Interested in Contract.

No officer of such city shall be, directly or indirectly, interested in any contract with the city or for any institution, board, officer, agent or employee thereof, for the use of the city, or become surety for the performance of any such contract, nor shall any officer of such city accept from any railroad or street railway corporation, operating in whole or in part within the city, any pass or free transportation or any transportation upon any terms, save such as are open to the public generally; this pro-

vision, however, shall not apply to police officers while on duty; nor shall any officer of such city accept or receive, directly or indirectly, free of charge or upon any other terms, except as may be open to the public generally, any commodity or thing of value from any public service corporation whatsoever owning or enjoying a franchise granted by such city. The violation of any of the provisions of this section shall work a forfeiture of the office of the officer violating the same and shall warrant his removal from office by impeachment or other proper procedure; and any such officer so violating shall forfeit to the city all sums of money paid him by the city as salary during the term for which he shall be guilty of such misconduct up to the time of the recovery of judgment against him therefor; and a civil action for the recovery thereof may at any time be commenced in the name of the city and in any court of competent jurisdiction. [L. '07, p. 628, § 13.]

§ 9019. [7597.] City to be Divided into Wards.

The city council, at any time not within three months previous to an annual municipal election, may divide the city into wards, not exceeding six wards in all, and change the boundaries of such wards: Provided, that no change in the boundaries of the wards shall affect the term of office of any councilman, but he shall serve out his term in the ward in which his residence may be at the time of his election, but if more reside in any one ward than the proportion to which it is entitled, those of the shortest unexpired term shall, by the council, be assigned for such unexpired term to a ward where there is a vacancy. The representation of each ward in the city council shall be as near as may be in proportion to its population. No person shall be eligible to the office of councilman unless he shall reside at the time of his election in the ward for which he was elected, and the removal of a councilman during his term of office from the ward for which he was elected to another ward in the city will render his office vacant. [L. '07, p. 629, § 14.]

§ 9020. [7598.] Recall of Councilman.

Whenever three-fifths of all the qualified voters, of any ward in such city from which any councilman has been elected, as shown by the last general municipal election returns, shall petition the city council for the recall of such member of the city council, it shall be the duty of the city council to call a special election in such ward for the election of a councilman to take the place of the councilman whose recall is so petitioned for, and thereupon such special election shall be held in such ward. A councilman whose recall is petitioned for, shall be competent to be a candidate for re-election at such special election. The provisions of the law and the ordinances of such city governing general municipal elections shall, as far as practicable, apply to such special election. Should the councilman whose recall is petitioned for be defeated in such special election he shall vacate his office for the balance of his term in favor of the successful candidate at such special election, who shall serve out the unexpired term. The petition for recall of a councilman, shall be signed by the petitioning electors, only in the office of the city clerk where said petition shall be kept on file for that purpose and all signatures must be

appended thereto within an interval of ten days so that no more than ten days shall elapse between the signing of the first and last names of said petition. [L. '07, p. 629, § 15.]

§ 9021. [7599.] Mayor, Powers and Duties.

The mayor shall be the chief executive officer of the city. He shall have general supervision over the several departments of the city government and over all its interests; shall preside over the city council, when present; once in three months, submit a general statement of the condition of its various departments, and recommend to the city council such measures as he may deem expedient for the public health or improvement of the city, its finances or government. He shall sign all ordinances passed by the city council, if he approves them; if he does not approve them he shall within eight days after their submission to him return the same to the city clerk's office with his objections in writing, and at the first meeting of the city council thereafter the same shall be entered upon their journal and they shall then reconsider such ordinance and unless two-thirds of the councilmen elected vote for its passage it shall not become a law. If the mayor shall not so return any ordinance within eight days it shall become a law as if he signed it. He may call special meetings of the city council at any time; he shall do so at the written request of four councilmen by notifying each member personally, or by written notice left at his last and usual place of abode, or his place of business during business hours, stating the purpose of such meeting. He shall countersign all warrants and licenses, deeds, leases and contracts requiring his signature, and issued under and by authority of the city. [L. '07, p. 630, § 16.]

See *infra*, § 9203, vacancy in offices.

§ 9022. [7600.] President of the Council.

The president of the city council shall preside at all meetings of the council when the mayor is not present; whenever there is a vacancy in the office of mayor or he is absent from the city or unable from any cause to discharge the duties of his office, the president shall act as mayor and exercise all his authorities and be subject to all his duties. The president pro tem. of the council shall have all the powers of the president of the council during the session of the council at which the mayor pro tem. is presiding. [L. '07, p. 631, § 17.]

§ 9023. [7601.] Deputies, Appointment of.

The chief of police, city attorney and city clerk may each, with the approval of the city council only, appoint such deputies as may be necessary, by writing to be filed with the clerk. Each deputy so appointed shall receive for his services compensation to be fixed by the city council, not exceeding one hundred dollars per month, and shall perform such duties, under the direction of his principal, as may be by said council prescribed. The principals shall each be responsible for his deputy, and may revoke the appointment at pleasure. [L. '07, p. 631, § 18.]

§ 9024. [7602.] Duty of Treasurer.

It shall be the duty of the city treasurer to receive and safely keep all moneys belonging to such city from whatever source derived; to place

the same to the credit of the different funds to which they properly belong in a book kept for that purpose; to disburse said money by direction of the city council and in accordance with the provisions made by them under the provisions of this act, and to make a report monthly to the city council of the condition of the treasury. [L. '07, p. 631, § 19.]

See supra, § 5571, city depositaries, duty of treasurer.

§ 9025. [7603.] Duties of City Clerk.

It shall be the duty of the city clerk to keep the corporate seal, and all papers and documents belonging to the city; to file them in his office under appropriate heads; to attend the sittings of the city council and to keep a journal of their proceedings and records of all their resolutions and ordinances; to sign all warrants and licenses issued in pursuance of the orders and ordinances of the city council and to affix the corporate seal on such licenses; to sign all deeds, leases, contracts, bonds and other documents when authorized by the council; to keep an accurate account in a suitable book under the appropriate heads of all expenditures, of all orders drawn upon the city treasurer and of all warrants issued in pursuance thereof; also to keep an account in an appropriate book of all licenses issued, with the names of the persons to whom issued, the date of issue, the time for which the same was granted and the sums paid therefor and to perform such other duties as he may be required to perform by the provisions of this act, or by ordinance. He shall receive for his services a salary to be fixed by the council not exceeding the sum of one hundred and fifty dollars per month. [L. '07, p. 631, § 20.]

§ 9026. [7604.] Salary of Chief of Police.

The chief of police shall receive a salary which shall not exceed the sum of fifteen hundred dollars per annum to be determined by the city council. [L. '07, p. 632, § 21.]

§ 9027. [7605.] Salary of City Treasurer.

The city treasurer shall receive a salary which shall not exceed the sum of fifteen hundred dollars per annum to be fixed by the city council. [L. '07, p. 632, § 22.]

§ 9028. [7606.] Street Commissioner.

The street commissioner by and under the direction of the mayor and city council shall have control of the streets and public places of the city and shall perform such duties as the city council may prescribe. The street commissioner shall receive such salary as may be prescribed by the city council. [L. '07, p. 632, § 23.]

§ 9029. [7607.] Police Force.

The police force of such city shall consist of a chief of police and such number of policemen as shall from time to time be fixed and determined by the city council. [L. '07, p. 632, § 24.]

§ 9030. [7608.] Appointment and Removal.

The mayor, with the consent of the council, shall appoint the policemen and all subordinate officers of the city and may, for cause, remove the

same, with the consent of the council, as hereinafter provided. [L. '07, p. 632, § 25.]

§ 9031. [7609.] City Attorney.

The city attorney shall be the legal adviser of the city council and of all the officers of the city in relation to matters pertaining to their respective offices. He shall represent the city in all litigation in all courts in which the city is a party or directly interested, and shall prosecute all violations of the city ordinances, and shall act generally as the attorney for the city and the several departments of the city government, and he shall perform such other duties as the city council may direct. He shall receive such salary as may be determined by the city council, not exceeding, however, the sum of fifteen hundred dollars per annum. [L. '07, p. 632, § 26.]

See supra, § 9013, appointment by mayor.

§ 9032. [7610.] City Council—How Constituted.

The mayor and councilman of the several wards shall constitute the city council and at the first meeting in May next after the city election the city council shall elect one of their own body to serve as president of the council. The mayor shall preside at all meetings of the council when present, and in his absence the president of the council shall preside and perform the duties devolving upon the mayor. In the absence of both the mayor and the president of the council, the council may elect a president pro tem., who shall act during such absence. [L. '07, p. 633, § 27.]

§ 9033. [7611.] Quorum—Rules—Journal.

A majority of the councilmen elect shall constitute a quorum for the transaction of business. A less number may adjourn from time to time and may compel the attendance of absent members. The council may punish their members for disorderly conduct, and upon written charges to be entered upon their journal for such conduct, after trial, may expel a member by a vote of two-thirds of all the members elected. The mayor shall have a vote only in case of a tie in the votes of the other members. The council shall determine their rules of proceeding. The sittings of the council shall be open to the public, except where the interests of the city shall require secrecy. A journal of all their proceedings shall be kept by the clerk under their direction. At any time, at the request of any two members, the ayes and noes on any question may be taken and entered upon the journal. The president of the council while presiding, or the president pro tem., when a councilman, shall have the right to vote upon all questions coming before the council. The president pro tem. may be elected by the council from their own body, or any other elector of such city may be elected president pro tem. When an elector, who is not a councilman, shall be elected president pro tem. he shall not have the right to vote upon any question. [L. '07, p. 633, § 28.]

§ 9034. [7612.] Powers of Council Enumerated.

The city council of such city shall have power and authority:

1. Ordinances: To make and pass all ordinances, orders and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this act, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this act.

2. License of Shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theaters, melodeons, balls, concerts, dances, theatrical, circus or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard-tables, pool-tables, bowling-alleys, exhibitions or amusements.

3. Hotels, etc. Licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, saloons, bar-rooms, banks, brokers, manufactories, livery-stables, express companies and persons engaged in transmitting letters or packages, railroad, stage and steamboat companies or owners, whose principal place of business is in such city, or who shall have an agency therein.

4. Auctioneers' Licenses: To license and regulate auctioneers for the purposes of revenue and regulation.

5. Saloon Licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress and regulate all tippling-houses, dram-shops, saloons, bars, bar-rooms, raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths or sheds.

6. Dance-houses: To prohibit or suppress, or to license and regulate all dance-houses, fandango-houses, or any exhibition or show of any animal or animals.

7. License Vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage and property.

8. Hotel Runners: To license or suppress runners for steamboats, taverns, or hotels.

9. License Generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified: Provided, that on any business, trade or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require.

10. Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace or disorderly conduct in any place, house or street in the city.

11. Nuisances: To declare what shall be deemed nuisances; to prevent, remove and abate nuisances at the expense of the parties creating, causing

or committing or maintaining the same, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same.

12. Stock Pound: To establish, maintain and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

13. Control of Certain Trades: To control and regulate slaughter-houses, wash-houses, laundries, tanneries, forges and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

14. Street Cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in streets, sloughs, alleys, back yards or public grounds of such city, or elsewhere therein.

15. City Jail: To establish, alter and repair city prisons and to provide for the regulation of the same, and for the safekeeping of persons committed thereto; to provide for the care, feeding and clothing of the city prisoners; to provide for the formation of a chain-gang for persons convicted of crimes or misdemeanors, and their proper employment and compulsory working for the benefit of the city; and also to provide for the arrest and compulsory working of vagrants: Provided, that no prisoner shall be required to perform any labor until he shall have been duly convicted of some offense punishable by imprisonment and duly sentenced thereto.

16. Gambling, etc.: To prohibit and suppress all gaming and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions and shows.

17. Markets: To establish and regulate markets and market places.

18. Speed of Railroad Cars: To fix and regulate the speed at which any railroad cars, street-cars, automobiles or other vehicles may run within the city limits, or any portion thereof.

19. City Commons: To provide for and regulate the commons of the city.

20. Fast Driving: To regulate or prohibit fast driving or riding in any portion of the city.

21. Combustibles: To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

22. Property: To have, purchase, hold, use and enjoy property of every name or kind whatsoever, and the same to sell, lease, transfer, mortgage, convey, control or improve; to build, erect or construct houses, buildings or structures of any kind needful for the use or purposes of such city.

23. Fire Department: To establish, continue, regulate and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband said fire department, and to create, organize, establish and maintain a paid fire department for such city.

24. Water Supply: To adopt, enter into and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

25. Overflow of Water: To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

26. House Numbers: To provide for the numbering of houses.

27. Health Board: To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments and to prohibit them within the city limits.

28. Harbors and Wharves: To build, alter, improve, keep in repair and control the waterfront; to erect, regulate and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing and removing steamboats, sail vessels, rafts, barges and all other water craft; to fix the rate of speed at which steamboats and other steam water craft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or water-courses or channels.

29. License of Steamers: To license steamers, boats and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

30. Ferry Licenses: To license ferries and toll bridges under the law regulating the granting of such license.

31. Penalty for Violation of Ordinances: To determine and impose fines for forfeitures and penalties that shall be incurred for the breach or violation of any city ordinance, notwithstanding that the act constituting a violation of any such ordinance may also be punishable under the state laws, and also for a violation of the provisions of this chapter, when no penalty is affixed thereto or provided by law, and to appropriate all such fines, penalties and forfeitures for the benefit of the city; but no penalty to be enforced shall exceed for any offense the amount of five hundred dollars or three months' imprisonment, or both; and every violation of any lawful order, regulation or ordinance of the city council of such city is hereby declared a misdemeanor or public offense, and all prosecutions for the same may be in the name of the state of Washington.

32. Police Department: To create and establish a city police; to prescribe their duties and their compensation and to provide for the regulation and government of the same.

33. Elections: To provide for conducting elections and establishing election precincts when necessary, to be as near as may be in conformity with the state law.

34. Examine Official Accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management or disposition of moneys, property or business of the city.

35. **Contracts:** To make all appropriations, contracts or agreements for the use or benefit of the city and in the city's name.

36. **Streets and Sidewalks:** To provide by ordinance for the opening, laying out, altering, constructing, extending, repairing, grading, paving, planking, graveling, macadamizing or otherwise improving of public streets, avenues and other public ways, or any portion of either thereof; and for the construction, regulation and repair of sidewalks and other street improvements, all at the expense of the property to be benefited thereby; without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks and squares, and to enforce the observance thereof.

37. **Waterways:** To clear, cleanse, alter, straighten, widen, fill up or close any waterway, drain or sewer, or any watercourse in such city when not declared by law to be navigable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

38. **Sewerage:** To adopt, provide for, establish and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid and to determine the manner, terms and place of connection with main or central lines of pipes, sewers or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

39. **Buildings and Parks:** To provide for all public buildings, public parks or squares, necessary or proper for the use of the city.

40. **Franchises:** To permit the use of the streets for railroad or other public service purposes.

41. **Payment of Judgments:** To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise or rights, or interest, shall be attached, levied upon or sold in or under any process whatsoever.

42. **Weighing of Fuel:** To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his duties, and may prescribe his term of office, and the fees he shall receive for his services: Provided, that such fees shall in all cases be paid by the parties requiring such service.

43. **Hospitals, etc.:** To erect and establish hospitals and pesthouses and to control and regulate the same.

44. **Waterworks:** To provide for the erection, purchase or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

45. **City Lights:** To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric or other light, and for the ownership, purchase or acquisition, construction or maintenance of such works as may be necessary or con-

venient therefor: Provided, however, that no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

46. Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

47. Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

48. Power of Eminent Domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses provided for by this act, as the interests of the city may from time to time require.

49. To Provide for the Assessment of Taxes: To provide for the assessment, levying and collecting of taxes on real and personal property for the corporate uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

50. Local Improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous or proximate property, and to provide for the manner of making and collecting assessments therefor.

51. Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

52. Fire Limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which stone, brick and other buildings, party walls and partition fences shall be constructed and maintained.

53. Safety and Sanitary Measures: To require the owners of public halls, theaters, hotels and other buildings to provide suitable means of exit and proper fire-escapes; to provide for the cleaning and purification of watercourses and canals and for the draining and filling up of ponds or [on] private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of said city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons inflicted [afflicted] with any contagious disease to some suitable place to be provided for that purpose.

54. To Regulate Liquor Traffic: To license, tax, confine within limits of time and place to be by the city council prescribed and to otherwise regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed or fermented liquors and the collection of the license money therefrom for the use of the city: Provided, that no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted, and provided that no liquor license shall be granted to continue for a longer period than one year from the date thereof: And provided further, that no remission of any such license charge shall be made during the period for which it is granted.

55. To Establish Streets on Tide Lands: To project or extend or establish streets over and across any tide lands within the limits of such city.

56. To provide for the general welfare. [L. '07, p. 634, § 29.]

See *infra*, § 9199, additional powers.

Cited in 71 Wash. 164; 112 Wash. 451, of property outside the limits of this
473. state: *Langdon v. Walla Walla*, 112 Wash.

This section authorizes the acquisition 446, 193 Pac. 1.

§ 9035. [7612-1.] Publicity Fund in Cities of Less Than Eighteen Thousand Inhabitants.

Any city of the second class under eighteen thousand inhabitants of the state of Washington is hereby empowered to create a special fund to be known as a publicity fund, to be used exclusively for exploiting and advertising the general advantages and opportunities of such city and vicinity. Whenever the city council or other governing body in any such city shall decide to create a publicity fund under this act, such council or governing body of such city shall do so by ordinance, and thereupon the council or other governing body of such city shall have authority to levy annually for the creation and maintenance of such fund a special tax on all of the taxable property of such city, not exceeding two and one-half mills on the dollar of the assessed valuation of the taxable property of such city. All moneys derived from such tax levy shall be paid into such publicity fund and shall be devoted exclusively to the use herein stated, and shall be paid out only upon warrants drawn against the same and signed by at least two members of the publicity board hereinafter provided for. [L. '13, p. 175, § 1.]

§ 9036. [7612-2.] Expenditures—Publicity Board.

All expenditures from said fund shall be made under the direction of a publicity board of three members to be nominated by a recognized commercial organization of such city, then appointed by the mayor and confirmed by the council or other legislative body of the city by two-thirds vote; the members of such board shall serve without remuneration and must be actual residents and voters in such city and property owners therein; and the recognized commercial organization herein referred to must be representative and public and devoted exclusively to the work usually devolving on such organizations, and must have no less than two hundred bona fide dues paying members, and must be incorporated under the laws of the state of Washington; if there be more than one

organization meeting these qualifications in any city, then the oldest of such organizations shall be the one recognized within the meaning and provisions of this act. Members of the publicity board may be appointed in the manner herein provided any time after this act goes into effect and the first members appointed shall hold office until the second Monday in January following their appointment, or until their successors shall have been appointed and qualified, and thereafter the members of such publicity board shall be appointed at the first regular meeting in December of the city council or other governing body of such city and the terms of office of such members shall be for one year beginning on the second Monday in January after their appointment and until their successors are appointed and qualified. Members of the board, duly appointed and confirmed, shall qualify prior to the beginning of their term by taking the oath of office and by giving a bond to the city in the sum of one thousand dollars, conditioned upon the faithful performance of their duties. Any member of the board shall be removed by the mayor on request of the recognized commercial organization making the nomination, as hereinbefore stated, when it is shown that a majority vote of the entire membership of such recognized organization favoring such removal has been cast at any regular meeting of such organization. No part of said publicity fund shall ever be paid to any newspaper, magazine or periodical published within the city or county where such city is situated, for advertising or write-ups or for any other service or purpose whatsoever, and no part of such fund shall be expended for the purpose of making any exhibits at any fair, exposition or the like. [L. '13, p. 176, § 2.]

§ 9037. [7613.] Saloon Licenses.

The city council shall have power to revoke any liquor license for any cause by it deemed sufficient. Whenever a saloon license shall be revoked by the council on account of the licensee having carried on a disorderly house, sold liquor to minors, permitted gambling, or violated any of the ordinances of the city or laws of the state, the council shall declare the liquor bond given by such person to obtain his saloon license, forfeited, and thereupon the principal and sureties upon said bond shall be liable to the city for the full penalty of said bond, to be collected in an action brought by the city in any court of competent jurisdiction. In any such action the finding or action of the council in revoking such license on any of the grounds above specified shall be conclusive evidence in any such action of the existence of such grounds. When any saloon license shall be revoked or canceled for any of the causes above specified, no rebate or remission shall be made to the licensee for the unexpired term of his license, but the pro rata part of the license fee for the unexpired term shall be credited by the city to the said licensee upon the penalty of the saloon or liquor bond of said licensee, and said licensee and his sureties shall be liable to the city for the balance of said penalty of said bond. [L. '07, p. 642, § 30.]

§ 9038. [7614.] Franchises.

No ordinance granting a franchise or any valuable privilege in such city shall be passed on the day of its introduction, nor for thirty days

thereafter, nor until such ordinance shall have been published in at least one issue of the official newspaper of the city and after such publication such proposed ordinance shall not thereafter and before its passage, be amended in any particular where the amendment shall impose terms, conditions or privileges less favorable to the city than the proposed ordinance as published, but amendments favorable to the city may be made at any time and after publication. Such publication shall be at the expense of the applicant: Provided, that an ordinance granting a franchise to lay a spur, railroad track or tracks, connecting manufacturing plants, warehouses or other private property with a main line of railroad, need not be published before the same be passed by the council. No franchise or valuable privilege shall be created or granted by the city council otherwise than by ordinance, and the passage of any such ordinance shall require the affirmative vote of two-thirds of the councilmen elected. All publications of ordinances granting a franchise, both before and after passage, shall be made at the expense of the applicant or grantee. Where an ordinance granting a franchise or valuable privilege is sought to be amended after the same shall have been in force, the provisions of this section as to publication before final action upon such amendment, shall apply as in cases of proposed ordinances granting original franchises. [L. '07, p. 643, § 31.]

§ 9039. [7615.] No exclusive Franchise to be Granted.

No exclusive franchise or privilege shall be granted for the use of any street, alley or highway, or any other public place or any part thereof. [L. '07, p. 643, § 32.]

§ 9040. [7616.] Lease or Sale of Water Plant.

Whenever any such city shall own its own water plant or water system, electric lighting plant or gasworks, the city council of such city may lease or sell such water plant or water system, electric light plant or gasworks, but before doing so, the question of leasing or selling of any such property shall be submitted to the qualified electors of said city at a special election to be held for the purpose, or at the general municipal election, and if a majority of the votes cast at such election vote in favor of leasing or selling such property, the city council may then lease or sell the same, but in case a majority of the votes cast at such special or municipal election shall vote against the leasing or selling of such property, the city council shall have no power to lease or sell the same. [L. '07, p. 643, § 33.]

§ 9041. [7617.] Water and Light.

Before the city council of any such city shall, in the first instance, purchase, acquire, construct or adopt a municipal water system, electric light system or gas system, the question of such purchase, acquisition or adoption of any such system shall first be submitted to vote of the electors of the city at a special or general municipal election for adoption or ratification. [L. '07, p. 644, § 34.]

§ 9042. [7618.] No Invalid Claims to be Allowed.

The city council of such city shall never allow, make valid, or in any manner recognize any demand against the city which was not at the time of its creation, a valid claim against the same, nor shall it authorize to be paid any demand which without such action would be invalid, or which shall then be barred by any statute of limitation or for which the city was never liable, and any such action shall be void. [L. '07, p. 644, § 35.]

§ 9043. [7619.] Claims and Damages.

All claims for damages against the city must be filed with the city clerk within thirty days after the time when such claim for damages accrued. No action shall be maintained against the city for any claim for damages until the same has been presented to the city council and until sixty days have elapsed after such presentation. The allowance of any and all damage claims against the city shall be by ordinance and not otherwise. [L. '07, p. 644, § 36.]

See *infra*, § 9478, accident claims, a later enactment.

§ 9044. [7620.] Eight Hours to Constitute a Day's Work.

In all public work done by or for the city, either by day's work or by contract, eight hours shall constitute a day's work; and no employee of the city on city works, or of any contractor or subcontractor on said work, shall be required to work longer than eight hours in any calendar day: Provided, however, that this section shall not be so construed as to in any manner apply to or affect any contract entered into by the city prior to the time this act goes into effect. This section shall be enforced by the city council by an appropriate ordinance. [L. '07, p. 644, § 37.]

See, also, *supra*, §§ 7642, 7645.

§ 9045. [7625.] Local Improvement Warrants—Payments.

Where any local assessment is made or to be made upon the "immediate payment plan" the city council may provide for the issuance of local improvement fund warrants against the local improvement district fund to be created. The local assessment-roll in any improvement district may be made up and the assessment levied and equalized at any time after the contract for the improvement shall have been let and a bond given for its faithful performance and the making up of such assessment-roll and the equalization thereof need not await the completion of the work. When the improvement shall be made on the basis of the "bond installment plan" the city council shall either in the original resolution of intention or in the ordinance creating the improvement district or subsequently designate the number of annual installments, not exceeding, however, ten annual installments, into which it is proposed to divide the assessment in such local improvement district, and in such case the assessment-roll as prepared and as finally equalized shall contain appropriate columns for the division of the assessment against each parcel of land into such number of installments as may have been previously prescribed by the city council. Assessments made on the "immediate payment plan"

shall begin to bear interest from such time as may be prescribed by the city council, such rate of interest to be eight per cent per annum prior to delinquency. Where the assessment is made on the "bond installment plan" each of the installments, including the first, shall bear interest before delinquency from and after the date of the equalization of the assessment-roll at the same rate as the special fund bonds against the particular improvement district, provided that such rate of interest before delinquency shall not exceed eight per cent per annum. All local assessments after delinquency, whether upon the "immediate payment plan" or the "bond installment plan," shall bear interest at the same rate as is now or may hereafter be provided by law in cases of delinquency of the general, county, and state taxes. Special improvement fund warrants or special improvement fund bonds may be issued when authorized by the council either before or after the equalization of the assessment-roll. The local improvement fund warrants or bonds in any local improvement district shall be collected and paid in their numerical order. In making up the assessment-roll and in levying and equalizing the assessment for any local improvement district, it shall be proper to include therein the estimated cost and expense of the necessary engineering and surveying for such improvement; also the cost of ascertaining the ownership of lots and lands included within the district; the cost of advertising and publishing as well as the interest accrued or to accrue upon special fund warrants or bonds in connection with such improvement. [L. '07, p. 650, § 42; L. '09, p. 410, § 1.]

§ 9046. [7626.] Installment Bonds—Issuance—Interest, etc.

Whenever any local improvement shall be made upon the basis of the "bond installment plan," the city council shall provide for the issuance of "installment local improvement bonds" to cover the entire amount of the assessment against abutting or contiguous property in such local improvement district. Said bonds shall be of such denominations, numbers and for such amounts and shall bear such a rate of interest per annum not exceeding eight per cent per annum, as the council may prescribe. The bonds herein provided for shall be signed by the mayor and city clerk and shall bear the seal of the city and each bond shall contain a coupon for each installment of interest maturing thereon, to be surrendered and canceled by the holder when the same is paid. When sufficient funds have accumulated in any local improvement district fund referred to in this section, to take up or redeem any bond or coupon next entitled to redemption and then due, the city treasurer, who shall be custodian of all local improvement funds, shall publish a call for such coupon or bond, and from and after the date of such publication, interest on such coupon or bond shall cease. The city council shall have the power to pass any and all ordinances necessary to put this section into effect. [L. '07, p. 650, § 43; L. '09, p. 412, § 2.]

See *infra*, § 9490, bonds for public utilities, a later enactment.

See *infra*, § 9515, local improvement bonds.

§ 9047. [7627.] Bonds Continued.

The installment or local improvement bonds mentioned in the preceding section shall be a charge only against the local improvement fund of the local improvement district created for their payment, and the city shall in no event or under any circumstances be liable for the payment of any such bond, otherwise than out of such fund, when collected, and the holder of any such bond shall have recourse only against such fund. Said bonds may be issued to the contractor making the improvement in payment for the work, or may be negotiated by the city council at not less than par value and the proceeds applied towards making the improvement. [L. '07, p. 652, § 44.]

See note to last section.

§ 9048. [7628.] Other Bonding Statutes not Repealed.

The provisions contained in the preceding sections of this chapter shall not be construed as working a repeal of any of the statutes or laws of this state now in force relative to the issuance of bonds against local assessment funds or local improvement districts of any character, but all such other acts and laws now in force shall be continued in force with reference to cities of the second class, and the bonding provisions contained in this act shall be construed as concurrent and cumulative provisions with any and all existing provisions contained in any other acts or laws. [L. '07, p. 652, § 45.]

"Act" refers to this chapter up to and including § 9075.

See note to § 9046.

§ 9049. [7629.] Local Assessments—Treasurer's Duties.

The city treasurer of such city shall be the collector of all local improvement assessments of every nature within such city, both before and after delinquency and up to the time such local delinquent assessments shall be certified to the county treasurer of the county in which such city is situated, as hereinafter provided. [L. '07, p. 652, § 46.]

§ 9050. [7630.] Delinquent Assessments Certified to Tax-roll.

Whenever any local improvement assessment, whether for street, sewer, drainage, filling or for any other purpose whatsoever, shall remain delinquent and unpaid for a period of sixty days after the date of delinquency, it shall be the duty of the city treasurer of such city to certify and transmit to the county treasurer of the county a list of all such delinquent local assessments, with a description of the parcel or parcels of land to which the same are chargeable and the amount with interest, chargeable to each parcel, together with the number of the improvement district and such other information as the council by ordinance may direct. Upon receiving such list it shall be the duty of the county treasurer of the county to enter said delinquent local assessments against the respective parcels of land upon the current tax rolls of the county for the general county and state tax, in a separate column in said rolls to be provided and known as the "local improvement column." All such delinquent local assessments so certified, including

assessments heretofore certified shall bear interest from the time of filing the list with the county treasurer at the rate of fifteen per cent per annum. It shall be the duty of the city treasurer of such city, as soon as this act takes effect, to certify to the county treasurer as herein provided all delinquent local improvement assessments of said city which shall then have been delinquent for a period of sixty days or more. In certifying delinquent assessments to the county treasurer under this section the city treasurer shall compute and combine in one sum, against each parcel of land, the original assessment, accumulated interest and penalties, if any. [L. '07, p. 653, § 47; L. '09, p. 413, § 3.]

See supra, § 8125, assessment of state lands.

See infra, §§ 9340, 9344, assessment of city and county lands.

§ 9051. [7631.] Collection by County Treasurer.

The treasurer of the county shall collect and receipt for any and all delinquent local assessments entered upon the tax-rolls of the county as provided in the preceding section in the same manner as county taxes are collected, and shall make monthly remittances thereof to the city treasurer, accompanied with appropriate statements showing the particular assessments paid. Certificates of delinquency may be issued by the county treasurer for any such local assessments so entered upon the county tax-rolls as near as practicable in the same manner as certificates of delinquency for the general county and state taxes are issued, and when a certificate of delinquency for the general taxes is issued to any person on any parcel of land against such a local assessment is entered upon the county rolls, such local assessments shall be included in such certificate of delinquency and paid for by such person, and the county treasurer shall issue a certificate of delinquency to any individual paying the amount of such local assessment so entered upon the county rolls, together with all other taxes then due upon the rolls. The purchaser of any such certificate of delinquency may foreclose the same at any time after the expiration of six months from the date that said local assessment was entered upon the county rolls, and the date when such certificate of delinquency shall be subject to foreclosure shall be specified in the certificate of delinquency so issued. Certificates of delinquency issued by the county treasurer, as herein provided, shall be in form as near as may be in accordance with the certificate of delinquency issued for the general taxes. The proceedings to foreclose any delinquent certificate issued for such local improvement tax by the county treasurer shall be in accordance with the laws providing for the foreclosure of certificates of delinquency for the general taxes, and all provisions of law relating to the issuance and foreclosure of certificates of delinquency and the issuance of tax deeds thereon for general taxes shall be applicable to the foreclosure of delinquent certificates issued by the county treasurer for such local assessments so entered upon the rolls. [L. '07, p. 653, § 48.]

§ 9052. [7632.] Foreclosure of Delinquency Certificates—Procedure.

Whenever the county shall institute suit for the foreclosure of the general certificate of delinquency issued to the county for delinquent taxes for any year, there shall be included in such certificate of delin-

quency, and in such suit to foreclose the same, any and all property against which delinquent local assessments, as provided in this act, shall have been entered upon the tax-rolls of the county for six months prior to the commencement of such suit, and such delinquent local assessments shall be foreclosed in such suit by the county with the delinquent general taxes, and such foreclosure proceedings with reference to said delinquent local assessments shall be had as near as may be in accordance with the foreclosure of delinquent general taxes, and the land against which such local assessment so entered on the county rolls stands, shall be sold at the same time and in the same manner as for the general county taxes embraced in said suit. In case any land covered by any such local assessment shall be sold to the county and a tax deed issued to the county, the county shall be deemed to hold the same in trust for the county and for the city, and whenever such land shall be subsequently sold by the county, the county shall deduct from the proceeds of such sale, first, the full amount of the general taxes chargeable against such property, with the accumulated interest, and second, the balance of said selling price, or so much thereof as may be necessary to pay the amount of such local assessment, and accumulated interest, shall be remitted by the county treasurer to the city treasurer of such city, and any excess remaining shall belong to the county. The right of redemption from such local improvement tax assessment shall exist up to the time of the issuance of the tax deed therefor, and not thereafter, as in cases of general county and state taxes. [L. '07, p. 654, § 49.]

§ 9053. [7633.] Subsequent Installments Remain a Charge.

Where any local assessment shall be made upon the bond installment plan as hereinbefore provided, foreclosure sale and issuance of a tax deed for any one installment shall not discharge such land so foreclosed upon and deeded from the lien of any of the subsequent unpaid installments of said assessment which may thereafter become due, but any such land or parcel of land may be foreclosed upon for any subsequent installments maturing, and the holder of any tax deed upon a prior installment who permits a subsequent installment to be foreclosed and deeded shall forfeit his title to the holder of the later tax deed under the later installment. [L. '07, p. 655, § 50.]

§ 9054. [7634.] Extension of Water-mains.

The city council of such city shall have power to provide for the extension of water-mains within the said city and to assess the whole or any part of the cost of such extensions, in their discretion, to the abutting and contiguous property specially benefited thereby, and for that purpose the city council shall have power to create local improvement districts, the council to have full discretion as to the territory to be included within such district. The amount of the assessment for the extension of water-mains within any such improvement district against any parcel of land shall be such proportion of the entire expense to be assessed, as the assessed value of said parcel of land, exclusive of improvements, as shown on the general tax-roll for the current year, bears to the total assessed value of all of the land, exclusive of improvements, situated within said

district as shown upon the general tax-rolls for the current year. Any assessment levied under the provisions of this section shall be a first lien upon the property assessed from the time of the equalization of the assessment-roll, and shall take precedence over all other liens, except general county and state taxes and shall be collected in the mode prescribed in this act for other assessments for local improvements. [L. '07, p. 656, § 51.]

See *infra*, § 9488, acquisition of public utilities.

§ 9055. [7635.] Public Works—How Contracted for.

In the erection, improvement and repair of all public buildings and works, in all street and sewer work and in all extensions of the water-mains and improvements of the water system, lighting plant or gas plant, and in all work in and about streams, bays or waterfronts, or in or about embankments or other works for protection against overflow and in draining and filling lowlands, and in furnishing any supplies and materials for the same, when the expenditure required for the same exceeds the sum of five hundred dollars, the same shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulations as may be prescribed by ordinance: Provided, that the city council may reject all bids presented and readvertise in their discretion, or, if in the judgment of the council, such work can be performed, or supplies or materials furnished by the city independent of contract, cheaper than under the lowest bid submitted, it may, after having so advertised and examined the bids, cause such work to be performed or supplies or materials to be furnished independent of contract. The city council shall annually at a stated time contract for doing all city printing and advertising, which contract shall be let to the lowest bidder, after due notice, as provided in this section. All advertising shall be done in a newspaper printed and published in such city, and the contract therefor shall be awarded separately from all other printing. [L. '07, p. 656, § 52.]

See note to last section.

§ 9056. [7636.] Filling Swamp-lands or Tide Flats.

Whenever the city council of such city shall deem it necessary or expedient on account of the public health, sanitation, the general welfare or other cause, to fill any slough, swamp-lands, lowlands or lands commonly known as "tide flats," situated within the limits of such city, said city council shall have power so to do, and the expense thereof shall be assessed to the property benefited, except such amount of such expense as the city council in its discretion may order paid out of the current expense fund, and the proceedings for such filling and assessment of the cost thereof shall be as follows:

Before filling any such slough, swamp-lands, lowlands or lands commonly known as tide-lands, the expense of which is to be assessed against the property benefited, the city council of such city (having caused plans and specifications to be prepared and filed with the city clerk) shall first pass a resolution or ordinance declaring its intention to make such improvement and describing in said resolution the lands to be included

within the proposed improvement district and which it is proposed to assess for the cost of said improvement, and also stating in said resolution or ordinance the estimated total cost of said improvement or filling, and also stating that the cost of the same is to be assessed against the property included in the proposed improvement or assessment district therein provided, and fixing in said resolution or ordinance a time not less than twenty days after the date of the passage of such resolution or ordinance in which protests against such proposed filling or improvement may be filed in the office of the city clerk. It shall be the duty of the city clerk to cause such resolution or ordinance to be published in the official paper of the city in at least three consecutive issues thereof before the time fixed in such resolution for filing such protests, the first of which publication shall be at least fifteen days prior to the date fixed for the filing of protests. If protests against the proposed filling or improvement, by the owners of more than two-thirds of the entire area included within said proposed improvement or assessment district shall be filed on or before the date fixed for such filing, the council shall not proceed further with the work unless nine members of the council shall vote to proceed with the work. If no such protest is filed or if such protest is filed and nine members of the council shall vote to proceed with such work the said council shall appoint three disinterested and impartial viewers or appraisers to view and appraise any and all damage which may be done to any of the property situated within said proposed improvement district by reason of making the improvement or filling contemplated in accordance with the plans and specifications thereof theretofore made and filed in the office of the city clerk. It shall be the duty of the viewers so appointed to subscribe and place on file with the city clerk an oath that they will support the Constitution and laws of the state of Washington and that they will faithfully and impartially appraise the damage which may be caused to each of the several parcels of land situated within said proposed improvement district by reason of the improvement, and the several members of said board of viewers shall thereupon meet and elect one of their members chairman and the decision of any two members of said board shall be deemed the decision of the board. It shall be the duty of the said appraisers to personally inspect the lands included within said improvement district and to assess and determine the damage which may be caused by said improvement to any parcel of land or to any and all property situated within said improvement district. In determining or assessing such damages the said viewers shall determine the same exclusive of the benefits to any such parcels of land or property by reason of the improvement, the damage found to be independent of and without regard to the benefits accruing to the particular parcel of land or property by reason of the proposed improvement. As soon as practicable after their appointment, and at any rate within thirty days after such date said viewers shall make a report to the city council of such city of their findings in the premises, in which report all the land included within said proposed improvement district shall be separately described and the amount of damages awarded to the owner or owners of each parcel shall be stated in a column opposite the description of such parcel, and if no damage be found in favor of any particular parcel, such report shall cause it to so

appear. Upon the filing of said report the city council of such city shall by ordinance fix the time when and the place where said board of viewers shall sit to hear, determine and pass upon any and all objections to said report and to their findings therein, which hearing shall be not less than thirty days after the date of the passage of said ordinance, and said ordinance together with a notice of such hearing, shall be published in the official paper of such city once a week for three consecutive weeks before the date fixed for such hearing, the first publication of which ordinance and notice shall be not less than twenty-five days before the date fixed for such hearing. At the time and place fixed for such hearing the said viewers shall hear and determine all objections and protests to their report hereinbefore mentioned, and the said board of viewers shall have power at such hearing to modify and correct their report previously made and when said hearing shall be completed the said viewers shall recertify said report; and said report and the findings of the viewers thereon, as so corrected and recertified, shall be securely kept and preserved by the clerk of said city. Any person feeling himself aggrieved by the findings of said board of viewers at such hearing may appeal at any time within twenty days after the close of said hearing, to the superior court of the county in which said city is situated. Such appeal shall be taken by serving notice thereof upon the city clerk, which notice shall describe the parcel or parcels of land in relation to which such appeal is taken, and shall briefly state the grounds of such appeal and shall further designate such of the records as the appellant wishes the city clerk to certify to the superior court. It shall be the duty of the city clerk, within ten days after service of such notice of appeal, to prepare a certified transcript of the records relating to said proceedings called for in the notice of appeal, and deliver the same, so certified, to the appellant or his attorney. The appellant or his attorney may within ten days thereafter file the same with the clerk of the superior court and the failure by the appellant or his attorney to so file the same within said period shall work an abandonment of the appeal. When the appeal papers are so filed the superior court shall acquire jurisdiction. No pleadings shall be required in the superior court, but the superior court in its discretion may require or allow pleadings to be filed by either party, and in such proceedings the appellant shall be deemed the plaintiff, and the city the defendant. As to any and all parcels of land with reference to which no appeal shall have been taken within the time hereinbefore limited for appeals, the findings of the board of viewers shall be final. The fact of an appeal having been taken with reference to any parcel or parcels of land shall not delay the improvement or filling, but the council may proceed with the same as though no appeal had been taken. In case any of the viewers appointed by the council shall fail to qualify, or, having qualified, shall refuse to act, or should any vacancy occur in the board of viewers, the city council shall by appointment fill the vacancy so created. Instead of appointing viewers to assess the damages as herein contemplated, and as a substitute mode for ascertaining such damages, such city is hereby authorized, at the discretion of the city council, to have the damages ascertained and assessed in accordance with the provisions of chapter 5 of the session laws of the year 1905, which chapter is hereby

made applicable for the purpose of assessing damages in case of the filling of swamp and tide land, as herein contemplated. [L. '07, p. 657, § 53.]

The reference to the act of 1905 was intended to be "chapter 55," which was repealed by L. '07, p. 339, § 54: See §§ 9215—9279, *infra*, the laws now in force relating to the provisions referred to.

See *infra*, § 9426, filling lowlands, first and second class.

See *infra*, § 9432, filling lowlands, second and third class.

Cited in 58 Wash. 539.

§ 9057. [7637.] Payment of Damages.

When the final report of the board of viewers shall be certified, the said council of said city shall provide for the immediate payment, to the parties showing themselves entitled to receive the same, of the damages which may be awarded in favor of the owners of any parcel or parcels of land or property as shown by the report, and shall in like manner provide for the payment of any judgment against the city in any appeal. And any such owner shall be entitled to receive a current expense fund warrant of the city for the amount of the damages awarded in favor of the parcel of land or property owned by him, either in said report or by such judgment. In case any owner shall demand cash instead of a warrant the city council are empowered to negotiate current expense fund warrants at par to raise the cash for such purpose. The amount so paid by the city as damages shall be included in the expense of making the improvement and shall be assessed against the lands in the improvement district at the same time and in the same manner as the other expenses of such improvement are assessed. The current expense fund shall be reimbursed out of the first moneys collected in any such assessments, or realized from sale of improvement bonds. [L. '07, p. 661, § 54.]

Cited in 58 Wash. 539.

§ 9058. [7638.] Assessment—Procedure.

After the final certification and correction of the report of the board of viewers as hereinbefore mentioned, or at such time thereafter as the council may determine, the council shall proceed to enact an ordinance for said improvement or filling. By the provisions of such ordinance a local improvement district shall be established to be called "local improvement district No. —," which shall include all of the property to be included within said improvement district which it is proposed to assess for said improvement, but said improvement district so created shall not include any property with reference to which the board of viewers did not act, except that all streets, alleys and public places within or bordering upon the district may be included therein, as the council may order, but the council may, in their discretion, exclude from said district any portion of the land embraced within the calls of the original resolution lying contiguous to any marginal line of the improvement district. Such ordinance shall provide that such improvement shall be made and that the cost and expense thereof, including the damages awarded, shall be taxed and assessed upon all the property in such local improvement district, which cost and expense shall be assessed as follows:

Each parcel of land within said improvement district exclusive of streets, alleys and public places, shall be assessed for such proportion of the entire cost and expense of the entire district as the area of such lot or parcel of land bears to the entire area of said improvement district, exclusive of streets, alleys or other public places within said district, provided that the city council may expend from the general fund for such purposes such sums as in their judgment may be fair and equitable, in consideration of the benefits accruing to the general public by reason of such improvements. Thereafter the said council of said city shall let the contract for said improvement and shall cause the same to be made and shall levy an assessment against the property in accordance with the provisions of this act, and whenever any expenses or costs of work shall have been assessed on any lands, the amount of such expenses and costs of work shall become a lien upon the lands against which the same are assessed, which lien shall take precedence of all other liens except general tax liens. All of the provisions of this act and of the laws of the state of Washington in relation to the improvement of streets at the expense of abutting property in cities of the second class, including the method of certifying to the county treasurer delinquent assessments, and the mode of collection, shall apply to the proceedings, improvements and assessments herein contemplated when not inconsistent herewith and as far as the same may be applicable. [L. '07, p. 661, § 55.]

Cited in 58 Wash. 539.

§ 9059. [7639.] Immediate Payment or Bond Installment Plan.

The improvements herein contemplated with reference to filling of sloughs, swamp-lands, lowlands and lands commonly known as tide flats may be paid for upon the immediate payment plan or upon the bond installment plan as in this act provided in cases of local improvements upon public streets. [L. '07, p. 663, § 56.]

Cited in 58 Wash. 539.

§ 9060. [7640.] Ordinances—Enacting Clause.

The style of the city ordinances shall be as follows: "Be it ordained by the mayor and city council of the city of —," and all ordinances shall be published in one issue of the official paper of the city. [L. '07, p. 663, § 57.]

Cited in 75 Wash. 207.

§ 9061. [7641.] Ordinances—Approval—Evidence.

Ordinances shall be passed by the city council and approved by the mayor, or the president of the council while acting in his stead. But before any ordinance shall take effect it shall be published in the official newspaper of the city. A certified copy of any ordinance certified to by the clerk, or a printed copy of any ordinance or compilation printed by authority of the city council and attested by the clerk shall be competent evidence in any court. [L. '07, p. 663, § 58.]

See supra, § 1260½, ordinances as evidence.

Cited in 55 Wash. 695.

§ 9062. [7642.] Orders Entered on Journal.

All orders of the city council shall be entered upon the journal of their proceedings, which journal shall be signed by the officer who may preside at such meeting. [L. '07, p. 663, § 59.]

Cited in 111 Wash. 315.

§ 9063. [7643.] Ayes and Noes—When Entered.

Upon the passage of all ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses, the ayes and noes shall be entered upon the journal. [L. '07, p. 663, § 60.]

§ 9064. [7644.] Majority Necessary in Certain Cases.

A majority of all the members elected shall be necessary to pass any ordinance appropriating for any purpose the sum of five hundred dollars or upwards, or any ordinance imposing any assessment, tax or license, or in any wise increasing or diminishing the city revenue. [L. '07, p. 663, § 61.]

§ 9065. [7645.] Removal of Officers.

Any appointive officer may be removed by the mayor for any cause by him deemed sufficient, but such removal shall be by and with the concurrence of the vote of at least six members of the city council, except that the chief of police may be removed by the mayor without the concurrence of the council: Provided, that the city council by the affirmative vote of nine councilmen may, upon their own initiative, remove any appointive officer. [L. '07, p. 663, § 62.]

§ 9066. [7646.] Vacancies.

When a vacancy occurs in the office of mayor by reason of the death, resignation or disability of the mayor, the city council shall elect a mayor to fill the vacancy, who shall serve until the next general municipal election. In case of a vacancy in the city council the remaining members of such city council shall by the election fill such vacancy. In case a vacancy shall occur in any other elective office such vacancy shall be filled by appointment made by the mayor and confirmed by the council in the same manner as other appointments are made, except as to those elective offices which are herein otherwise provided for. [L. '07, p. 664, § 63.]

See *infra*, § 9203, vacancy in office of mayor.

§ 9067. [7647.] Health Officer.

The city council shall create the office of health officer and shall prescribe his duties and qualifications and fix his compensation. [L. '07, p. 664, § 64.]

See *supra*, § 6092, appointment of health officer.

§ 9068. [7648.] Railways to be Assessed.

Whenever any improvement shall be made upon any street occupied by the railroad track of any street railway, steam railroad or other rail-

road enjoying a franchise from the city upon such street, it shall be competent for the city council, and it shall be their duty to assess against such railroad situated within such improvement district, its just proportion of the expense of making such improvement, which proportion shall be estimated on a basis of charging to said railway not less than the expense of improving the space between the rails of said railroad and for a distance of one foot on each side of said rails. Said assessment shall be made on the rolls of said improvement district against the railway or railroad the same as against other property and said assessment shall be a lien upon said portion of said road from the time of the equalization of the roll, but the mode of enforcing the same shall be by civil action to foreclose in the superior court, the same period of redemption from any sale made on such foreclosure being allowed as in case of sale of real estate upon execution. [L. '07, p. 664, § 65.]

§ 9069. [7649.] Other Local Assessments.

Whenever any such city under the provisions of this act, or under the provisions of any other act or statute of the state of Washington, shall be empowered to assess the cost of any local improvement of whatsoever nature to abutting or contiguous property benefited thereby, the city council of such city shall have power to enact any and all needful ordinances to give effect to such power in order that such power may be effectually carried out, such ordinances, however, shall not be inconsistent with this act. [L. '07, p. 664, § 66.]

§ 9070. [7650.] Leasing Streets.

The city council of any such city shall have power to lease, for manufacturing, wharf, or other business purposes, such portions of the ends of streets terminating in the waterfront or navigable waters of said city, as the city council may deem expedient, but no such lease shall be made without the written consent of all of the property owners whose properties abut upon the portion of the street proposed to be leased. Such lease shall not be made for a longer term than fifteen years and the rental to be paid therefor shall be fixed by the city council: Provided, that all such leases must contain a clause that at intervals of every five years during the term, the rental to be paid by the lessee shall be readjusted between himself and the city by mutual agreement, and in case the city and said lessee cannot agree, then the question in dispute as to the amount of rental to be paid shall be left to arbitration, the city to select one arbitrator, the lessee to select one arbitrator and the two so selected to select a third, and the decision of the three so selected to be final. No lease of any such portion of such street shall be made in the first instance until the city council shall first cause notice to be published by the city clerk in the official newspaper at least fifteen days prior to the making of such lease, which notice shall describe the portion of the street proposed to be leased, to whom and for what purpose leased, and the proposed rental to be paid. The vote of two-thirds of all the councilmen elected shall be necessary to authorize such lease. The council shall have no power to validate any void lease heretofore made. The city council of such city shall have power to fix the rates and tolls to be charged within

such city by any public service corporation enjoying or to enjoy a franchise granted or to be granted by such city, but such power of the city council shall be reasonably exercised and their actions in this respect shall be subject to review by any court of competent jurisdiction. [L. '07, p. 665, § 67.]

§ 9071. [7651.] Construction of Dikes.

The city council of such city shall have power to construct and maintain dikes and tide gates and other equipment for the exclusion of the tides from any portion of such city, and may assess the cost thereof against the contiguous property specially benefited thereby, and for that purpose may create necessary improvement districts and levy local assessments, in such manner as to the council shall seem equitable and just, which shall constitute a lien upon the property assessed as in other cases of local improvements. [L. '07, p. 666, § 68.]

§ 9072. [7652.] Eminent Domain.

The right of eminent domain is hereby extended to any such city for the condemnation of lands and other property, either within or without the corporate limits of such city, for any and all corporate purposes and every such city shall have the right to appropriate real estate or other property, either within or without the corporate limits of such city, for any and all municipal purposes in the same manner and under the same procedure as now is or may hereafter be provided by law in cases of other corporations authorized by the laws of the state of Washington to exercise the right of eminent domain: Provided, that this section shall be construed as a concurrent and cumulative power conferred on such cities, and shall not be construed as in any wise repealing or affecting any law now in force conferring the power of eminent domain and the right to appropriate property on any such city, and in particular, this act shall not be construed as in anywise repealing or affecting the powers conferred on any such city by chapter 55 of the session laws of Washington for the year 1905. [L. '07, p. 666, § 69.]

See, also, § 9215 et seq.

The act of 1905, referred to, was repealed by L. '07, p. 339, § 54: See *infra*, §§ 9215—9279, the laws now in force relating to the provisions referred to.

§ 9073. [7653.] Tax Levies.

Any such city shall have power through its council to levy and collect annually, a property tax for the payment of outstanding warrants and also for the purpose of providing funds for the payment of interest on, and for the creation of sinking funds for, all outstanding bonded indebtedness, and in addition thereto, such city shall have power to levy and collect annual taxes for the payment of current expenses not exceeding fifteen mills on the dollar of assessed valuation: Provided, that if the qualified electors of said city at a special election to be held for that purpose should vote in favor of a larger levy for the payment of current expenses, than fifteen mills on the dollar of assessed valuation, a larger levy for said purpose may accordingly be made. All of the provisions of

sections 5635—5646, supra, so far as the same are not inconsistent herewith shall be applicable to such cities. [L. '07, p. 666, § 70.]

"Sections 5635—5646" substituted for reference to chapter 84 of the Laws of 1897.

See supra, §§ 5635—5646, taxation in cities.

Cited in 102 Wash. 621—624.

This section did not impliedly repeal § 5637, supra, as originally enacted and subsequently amended, fixing a limit for levies to pay outstanding indebtedness: *Benn v. Grays Harbor County*, 102 Wash. 620, 173 Pac. 632.

The provisions of a statute as to the time within which a city tax levy must be made are declaratory, and failure to strictly comply therewith does not deprive the city of the right to make a levy after the time has expired: *New Seattle Chamber of Commerce v. Seattle*, 88 Wash. 620, 153 Pac. 351.

§ 9074. [7654.] Special Tax Levy—Waterworks.

Whenever the needs of any such city may require it, a special water improvement fund may be created to be used exclusively for the building, acquisition, extension or improvements of the municipal waterworks and water system of any such city, said special water improvement fund to be created in the manner following, to wit: A general plan of the proposed extension or improvement of the municipal water system, together with the estimated cost of making such improvement, shall be prepared and filed in the office of the city clerk and published in the official newspaper of the city; thereupon the city council of said city shall by ordinance submit to the qualified electors of said city at a special election to be held for that purpose, the question of levying a special water improvement tax upon all of the taxable property within said city for the purpose of raising a special water improvement fund to be used exclusively for the making of the improvements or extensions in said water system; the question so submitted may contemplate the levying of such special tax for one year or for a succession of years, not exceeding ten years in all, the amount of the levy which it is proposed to make for each year, to be distinctly stated. If a majority of the votes cast at such special election shall vote in favor of the proposition to levy such special tax, then the city council shall have power to proceed with the levy of such special taxes during the year, or series of years, for which the same was authorized and said council shall create a special water improvement fund and may issue special water improvement fund warrants or bonds against said fund, the proceeds of which shall be used exclusively for the improving, extension, repair, or renewal, as the case may be, of the water system of such city. Such special water improvement fund warrants or bonds shall not be deemed an indebtedness against such city and the payment of such special water improvement fund warrants or bonds shall be limited to the special water improvement taxes so authorized to be levied and the holders of such warrants or bonds shall have recourse only against the funds raised by such special taxes. The special tax so authorized must be levied each year as originally authorized to take care of all outstanding warrants or bonds against such special fund. The city council shall have power to enact all necessary ordinances to give effect to this section. [L. '07, p. 667, § 71.]

See *infra*, § 9490, bonds for public utilities.

§ 9075. [7655.] Meetings of City Council.

The city council of any such city shall hold regular meetings, the time and place of meeting to be prescribed by ordinance, which regular meetings of the council shall not be oftener than once a week nor less frequent than every three weeks, but nothing herein contained shall prevent the city council from holding special meetings at any time. No ordinance shall be valid unless the same be passed at a regular meeting of the council. No claims shall be allowed against the city by the city council, nor shall the city council order any warrants drawn except at a general meeting of the council. No resolution or order for the payment of money shall be passed at any time other than at a regular meeting of the council. [L. '07, p. 668, § 72.]

§ 9076. [7656-1.] Police Courts—Establishment.

A police court is hereby established in cities of the second class and those cities operating under and pursuant to the provisions of section 9090 to 9113, which court shall always be open for business except upon non-judicial days, and upon such days may transact such business only as may be provided for by law. [L. '13, p. 301, § 1.]

§ 9077. [7656-2.] Jurisdiction of—Limitation—Appeals.

The police judge in such cities shall have exclusive jurisdiction over all offenses defined by any ordinance of the city, and all other actions brought to enforce or recover any license penalty or forfeiture declared or given by any such ordinance, and full power to forfeit bail bonds and issue execution thereon, and full power to forfeit cash bail, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinances, and pronounce judgment in accordance therewith: Provided, that for the violation of a criminal ordinance, no greater punishment shall be imposed than a fine of one hundred dollars or imprisonment not to exceed thirty days, or by both such fine and imprisonment. In the trial of actions brought for the violation of any city ordinance, no jury shall be allowed. All civil or criminal proceedings before such police judge and judgments rendered by him, shall be subject to review in the superior court of the proper county by writ of review or appeal. The procedure, in case of appeal or by writ of review, shall be in accordance with the provisions now governing appeals in justice's courts as near as may be. [L. '13, p. 302, § 2.]

Jurisdiction: See notes to §§ 44, 46, *supra*.

Cited in 100 Wash. 288.

The duty to certify and transmit a transcript on appeal is a purely ministe-

rial act which may be compelled by a writ of mandate: *State ex rel. Hackett v. Arnest*, 100 Wash. 286, 170 Pac. 563.

§ 9078. [7656-3.] Process.

All criminal process issued by such police judge shall be in the name of the state of Washington, and run throughout the state, be directed to the chief of police, marshal, or other police officer of any city, or to any sheriff or constable in the state, and shall be served by him. [L. '13, p. 302, § 3.]

§ 9079. [7656-4.] Prosecutions—Venue.

All prosecutions for the violation of any city ordinance shall be conducted in the name of the city, and may be upon the complaint of any person, and no change of venue shall be allowed from the police judge of such cities in action brought for the violation of city ordinances. [L. '13, p. 302, § 4.]

§ 9080. [7656-5.] Costs and Fees.

In all civil and criminal actions arising from the violation of city ordinances tried by such police judge, he shall charge up as costs in each case the same fees as are charged by justices of the peace for like services in every action. All fees so charged and collected by, and all fines and forfeits paid to such police judge shall belong to, and be paid over by him weekly to the city treasurer, who shall issue his receipt therefor. [L. '13, p. 302, § 5.]

§ 9081. [7656-6.] Supplies—Reports.

The governing body of the city shall furnish for use of the police court, all necessary dockets, books of record, blanks and blank forms which are deemed necessary to the proper administration of said court. The police judge shall, the last Saturday of each month, make a full report of all cases tried in his court for that month in which the city may be interested and file the same with the city clerk. [L. '13, p. 303, § 6.]

§ 9082. [7656-7.] Absence—Police Judge Pro Tempore.

In the event of the police judge's inability to act, or during any temporary absence, or if he should be disqualified, the mayor shall appoint from among the practicing attorneys and qualified electors of the city, a police judge pro tempore, who, before entering upon the duties of such office, shall take and subscribe an oath as other judicial officers, and while so acting, he shall have all the power of the police judge: Provided, however, such appointment shall not continue for a longer period than the absence or inability of the police judge. Such police judge pro tempore shall receive compensation for such services at the rate of five dollars per day, to be paid by the city. [L. '13, p. 303, § 7.]

§ 9083. [7656-8.] Must be Attorney—Election.

No person shall be eligible to hold the office of police judge who is not a practicing attorney under the laws of this state. In all cities of the second class, except such as have a commission form of government, a police judge shall be elected annually at the general municipal election and shall hold his office until his successor is elected and qualified. [L. '13, p. 303, § 8.]

§ 9084. [7663.] Seal—Transcripts as Evidence.

The court shall have a seal, to be provided by the city, and certified transcripts of the police judge's docket and the seal of his court shall be evidence in any court of the state of the contents of the docket; and all warrants and other processes issued out of said court, and all acts done

by said police judge under its seal, shall have the same force and validity in any part of this state as though issued or done by any court of record of this state. [L. '90, p. 176, § 99; 1 H. C., § 618.]

§ 9085. [7665.] Salaries—Chief of Police and Policemen, Powers and Duties of.

The city council of such city shall allow to the police judge an annual salary, which shall not exceed the sum of fifteen hundred dollars, and to the chief of police and the several policemen of such city each a salary which shall be fixed by said council. The salaries of the police judge and chief of police and policemen shall be paid, from time to time, as other city officers, and as the council may determine. The chief of police, or any policeman of such city, is hereby authorized and empowered to serve, execute and return any and all warrants of arrest, and all processes directed to him by the police judge of such city, and to arrest all persons accused or guilty of the violation of any city ordinance, or of any public offense, and to do and perform all acts and duties which in criminal cases any constable of the county may lawfully do, and receive like fees for such services: Provided, the city council may, in their discretion, deduct the amount so received for fees from the monthly salary of such officers, or order the same paid into the city treasury, for the use and benefit of the city, as received by said officers, respectively: Provided, that nothing in this charter shall be construed as authorizing or entitling such officers to charge or receive from such city, or the county wherein situated, any fees or costs in any case whatever, nor shall such city or county be liable to pay any fees or costs to such officers for any service they may render in any action or proceeding, either civil or criminal. The chief of police shall attend the session of the police court when required, supervise and direct the police force of the city, and perform such other duties as may be required by the city council appertaining to the government of the city or the management of its affairs, not especially devolved upon some officer named in this chapter; and the chief of police, or any policeman at his discretion, shall serve all notices by this chapter provided to be served in which the city is in any way interested, and the return of the officer so serving shall be evidence of the facts in such return stated, but none of such officers shall serve or execute any civil protest [process], except as provided in this chapter. [L. '90, p. 177, § 101; 1 H. C., § 620.]

“This chapter,” see note in § 8883.

Cited in 71 Wash. 596.

§ 9086. [7667.] Interested Party not Disqualified, When.

The interest which an inhabitant of such city may have in a penalty for the breach of a by-law or ordinance of such city shall not disqualify said inhabitant to act as judge, juror, or witness in any prosecution to recover the penalty. [L. '90, p. 178, § 103; 1 H. C., § 622.]

§ 9087. [7668.] Street Lights at Expense of Property Benefited.

In each city of the second class within this state, the city council thereof shall have power to install all necessary fixtures, appliances and

equipment for the suitable lighting of any of the public streets, avenues, squares or public places within such city and to assess the whole or any part of the cost of such installation against the property specially benefited in the manner hereinafter provided. When it is proposed to install any such lighting fixtures, appliances or equipment, in whole or in part, at the expense of the property benefited, the city council of any such city shall pass a resolution declaring its intention to make such improvement and stating in such resolution the name of the street, avenue, square or public place which it is proposed to improve by the installation of such fixtures, equipment and appliances and the points between which such improvement is proposed to be made and the estimated cost of the same and that the cost of the same is to be assessed against the property benefited and to be included within the proposed local assessment district herein provided. By such resolution the city council shall fix a time not less than ten days distant within which protests against such proposed improvement may be filed in the office of the city clerk. Such resolution shall further specify whether it is proposed to pay for said improvement upon the immediate payment plan or the bond installment plan, as defined by this chapter. [L. '09, p. 414, § 1.]

See § 9488, a later enactment, acquisition and extension of light plants and public utilities.

§ 9088. [7669.] Protests—Ordinance—Assessment of Cost.

It shall thereupon be the duty of the city clerk to cause such resolution to be published in the official newspaper of the city in at least two consecutive issues thereof, before the time fixed in such resolution for the filing of protests. If protests against said proposed improvement by the owners of more than two-thirds of the front feet of lots and lands abutting on such proposed improvement and included in the assessment districts therein proposed, be filed on or before the date fixed for such filing, the council shall not proceed further with such work unless eight members of the council shall vote to proceed therewith. If protests are not filed by the owners of two-thirds of the front feet of lots and lands as aforesaid, or if such protests are filed and eight councilmen shall vote to proceed with such work, the city council shall proceed to consider the same and shall then or at a subsequent time proceed to enact an ordinance for such improvement. By the provisions of such ordinance a local improvement district shall be established to be known as "local improvement district No. —," which district shall include all of the property fronting on the street, avenue or other public place to be improved between the points named in such resolution, to the distance back from such street, avenue or other place, if platted into blocks and lots, or if platted only into blocks, to the center of each block, and if platted into lots, only, then by including the entire lot, and if not platted, then to the distance of one hundred and twenty feet. Such ordinance shall provide that such improvement shall be made and that the cost and expense thereof shall be taxed and assessed upon all property in such local improvement district, which costs shall be assessed in proportion to the number of feet of such land and lots fronting thereon and included in such improvement district, and in proportion to the benefits derived

from such improvement: Provided, that the said council may expend from the general fund for such purposes such sums as in their judgment may be fair and equitable in consideration of benefits accruing to the general public by reason of such improvement. No contract for any such work shall be given except to the lowest responsible bidder. When any assessment shall be made upon any lands or property, as contemplated by this act, the amount of such assessments shall become a lien upon such lands, which shall take precedence of all other liens, except general taxes, which lien shall attach from the time of the equalization of the assessment-roll. [L. '09, p. 415, § 2.]

"This act" refers to §§ 9087—9089.

§ 9089. [7670.] Construction of Act.

All of the provisions of law which are now in force or which may be hereinafter enacted relating to local assessments for street improvements, so far as the same may be applicable, are hereby declared to be applicable to assessments and improvements made under the provisions of this act when not inconsistent herewith. Assessments levied under authority of this act shall be equalized, shall become delinquent and shall be enforced in the same manner as now provided by law for the equalization, delinquency and enforcement of assessments for other street improvements. [L. '09, p. 416, § 3.]

"This act" refers to §§ 9087—9089.

Cited in 64 Wash. 74.

CHAPTER X.

COMMISSION FORM OF GOVERNMENT.

§ 9090. [7670-1.] Population for Commission Form of Government.

Any city, now or hereafter, having a population of two thousand five hundred and less than twenty thousand, as shown by the last state or federal census or by any special census taken by the city in the manner prescribed in section 8939, may become organized as a city under the provisions of this act by proceeding as hereinafter provided. [L. '11, p. 521, § 1.]

Cited in 64 Wash. 71.

This act does not violate Constitution, Article XI, section 10, requiring classification of cities by general laws in proportion to population, although it creates a new classification for this purpose within the old classes; since the Constitution does not require uniformity of general laws relative to municipal corporations, and the act is general and of uniform operation: State ex rel. Hunt v. Tausiek, 64 Wash. 69, 116 Pac. 651, 35 L. R. A. (N. S.) 802.

This act is not unconstitutional because of its optional features: State ex rel. Hunt v. Tausiek, 64 Wash. 69, 116 Pac. 651, 35 L. R. A. (N. S.) 802.

This act is not void in that Constitu-

tion, Article XI, section 10, authorizes existing cities to become organized under general laws whenever a majority of the electors voting at a general election shall so determine; since the provision for a "special" election may be rejected as surplusage and the election held at the city's general election; neither does the constitutional provision make general the election held for such purpose, but merely fixes the time for holding it: State ex rel. Hunt v. Tausiek, 64 Wash. 69, 116 Pac. 651, 35 L. R. A. (N. S.) 802.

Commission form of municipal government. Ann. Cas. 1917C, 1103, 1125, 1132; Ann. Cas. 1918D, 878, 35 L. R. A. (N. S.) 802; 41 L. R. A. (N. S.) 111; 51 L. R. A. (N. S.) 632; L. R. A. 1917A, 1260.

§ 9091. [7670-2.] Petition—Election.

Upon petition of electors equal in number to twenty-five per centum of the votes cast for all candidates for mayor at the last preceding city election of any such city, the mayor shall by proclamation, submit the question of organizing as a city under this act at a special election to be held at a time specified therein, and within sixty days after said petition is filed. If said plan is not adopted at the special election called, the question of adopting said plan shall not be resubmitted to the voters of said city for adoption within two years thereafter.

At such election the proposition to be submitted and printed on the ballot shall be: "Shall the proposition to organize the city of (name of city), under chapter (naming the chapter containing this act) of the acts of the twelfth legislature of the state of Washington, be adopted?" and there shall be printed on the official ballots of said election the above proposition, followed by the words:

"For organization as a city under commission —."

"Against organization as a city under commission —" and the election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. If the majority of the votes cast shall be in favor thereof, the city shall proceed to the election of a mayor and two commissioners, as hereinafter provided. [L. '11, p. 521, § 2.]

Cited in 64 Wash. 79.

§ 9092. [7670-3.] Time of Holding Elections.

All regular elections under this act shall be held triennially on the first Monday in December, at which time there shall be elected a mayor and two commissioners who, together, shall constitute and be known as the "City Commission," and who shall serve for a term of three years and until their successors shall be elected and qualified: Provided, that the first election hereunder shall be held within sixty days after the adoption of the proposition to organize under this act as provided for herein: And provided further, that the commission elected at the first election shall serve until the third Monday in December following such first election, and for three years thereafter. [L. '11, p. 522, § 3.]

§ 9093. [7670-4.] Application of Act—Effect of Change.

All existing laws governing cities of the second class or applicable thereto, not inconsistent with the provisions of this act, shall apply to and govern cities organized under this act. All by-laws, ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed under the provisions of this act. The territorial limits of such city shall remain the same as under its former organization, and all rights and property of every description which were vested in any city under its former organization, shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change unless otherwise provided for in this act. [L. '11, p. 522, § 4.]

Cited in 64 Wash. 81.

§ 9094. [7670-5.] Vacancy—How Filled.

If any vacancy occurs in the city commission the remaining members of said commission shall, by appointment, fill such vacancy for the unexpired term.

All of said officers shall be nominated and elected at large. They shall qualify and their terms of office shall begin on the second Monday after their election. The terms of office of the mayor or councilmen or aldermen of such city under the former organization shall terminate at the beginning of the term of office of the city commission elected under the provisions of this act, and the terms of office of all other officers of such city under such former organization, except as hereinafter provided, shall terminate as soon as the commission shall by resolution declare. [L. '11, p. 523, § 5.]

§ 9095. [7670-6.] Bond of Commissioners.

Each member of the city commission shall, before qualifying, give a good and sufficient bond to the city in a sum equivalent to five times the amount of his annual salary, conditioned upon the faithful performance of the duties of his office, which said bond shall be approved by a judge of the superior court of the state of Washington for the county in which said city is located and filed with the clerk of said court. And said commission may, by resolution, require any of its appointees to give bond to be fixed and approved by said commission, and filed with the mayor. [L. '11, p. 523, § 6.]

§ 9096. [7670-7.] City Elections—Nominations.

Candidates to be voted for at the first and at all regular municipal elections, under the provisions of this act, shall be a mayor and two commissioners, who shall be nominated at a primary election; and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nomination shall be held on the second Monday preceding the municipal election. The officers of election appointed for the municipal election shall be the officers of the primary election, which shall be held at the same place, so far as practicable, and the polls shall be opened and closed at the same hours as are required for the municipal election.

Any person desiring to become a candidate for mayor or commissioner shall, not less than fifteen nor more than twenty-five days prior to said primary election, file with the city clerk a statement of such candidacy accompanied with the filing fee required by law, in substantially the following form:

State of Washington }
County of ——— } ss.

I, ———, being first duly sworn, say that I reside at ——— street, city of ———, county of ———, state of Washington; that I am a qualified voter therein; that I am a candidate for nomination to the office of ——— of the city of ———, to be voted upon at the primary election to be held on Monday, the ——— day of December, 19—, and I hereby request that my name

be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) — —.

Subscribed and sworn to (or affirmed) before me by — on this — day of —, 19—.

(Signed) — —.

He shall at the same time file therewith the petition of at least one hundred qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to the qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

PETITION ACCOMPANYING NOMINATION STATEMENT.

The undersigned, duly qualified electors of the city of —, and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination for — at the primary election to be held in such city on Monday, the — day of December, 19—. We further state that we know him to be a qualified elector of said city and a person of good moral character and qualified, in our judgment, for the duties of such office.

Names of qualified electors — —.

Number —.

Streets —.

Immediately upon the expiration of the time for filing the statements and petitions for candidates, the city clerk shall cause to be published over his signature for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballot, and if there be no daily newspapers, then in two issues of any other newspaper that may be published in said city. The said clerk shall thereupon cause the primary ballot to be printed. Upon the said ballot and under the ballot heading hereinafter provided, the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the right of each name, and immediately above shall appear the words "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for commissioners, with a square at the right of each name, and immediately above shall appear the words "Vote for two." The ballots shall be printed upon plain, substantial white paper and shall have no party designation or mark whatever. The ballots shall be in substantially the following form:

OFFICIAL PRIMARY BALLOT.

Candidate for nomination for mayor and commissioners of — at the
PRIMARY ELECTION.

(Date) — —.

Place a cross in the square opposite the names of the parties you favor
as candidates for the respective positions.

MAYOR.

Vote for One.

..... ☐
..... ☐

COMMISSIONERS.

Vote for Two.

..... ☐
..... ☐

Having caused said ballots to be printed, the said city clerk shall cause to be delivered to each polling place a number of said ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor. The persons who are qualified to vote at the general municipal election shall be qualified to vote at such primary election. The law applicable to challenges at a general municipal election shall be applicable to challenges made at such primary election. The officers of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, and make return thereof to the city clerk, upon proper blanks to be furnished by the said clerk, within six hours of the closing of the polls. On the day following the said primary election the said city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers of said city, at least once, the result thereof. Said canvass by the city clerk shall be publicly made. The two candidates receiving the highest number of votes for mayor, and the four candidates receiving the highest number of votes for commissioners, shall be placed upon the ballot as the candidates for mayor and commissioners, respectively, at the general municipal election.

All electors of cities under this act who by the laws of the state of Washington would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act and the ballot at such general municipal election shall be in the same general form as for such primary election, so far as applicable, and in all elections in such city the election precincts, voting places, method of conducting election, canvassing the votes and announcing the results shall be the same as by law provided for election of officers in such cities, so far as the same are applicable and not inconsistent with the provisions of this act. [L. '11, p. 523, § 7.]

Cited in 64 Wash. 72.

§ 9097. [7670-8.] Grafting—Penalty.

Any person who shall agree to perform any service in the interest of any candidate for any office provided for in this act, in consideration of

any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars (\$300) nor less than twenty-five (\$25) or be imprisoned in the county jail not exceeding thirty (30) days, nor less than five (5) days, or by both such fine and imprisonment. [L. '11, p. 527, § 8.]

§ 9098. [7670-9.] Soliciting—Bribing—Accepting—Penalty.

Any person giving or offering to give a bribe, either in money or other thing of value, to any elector for the purpose of influencing his vote at any election provided for in this act, or any elector who shall solicit, receive or accept, such bribe or other thing of value, or any person making false answer under any of the provisions of this act relative to his qualifications to vote at said election, or any person willfully voting or offering to vote at such election, who knowing himself not to be a qualified elector of such precinct where he offers to vote; or any person knowingly procuring, aiding or abetting any violating hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days. [L. '11, p. 527, § 9.]

§ 9099. [7670-10.] Vote of Commission.

Each member of the city commission shall have the right to vote on all questions coming before the commission. Two members of the commission shall constitute a quorum, and the affirmative vote of two members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure, unless a greater number is provided for in this act. Upon every vote, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing and read before the vote is taken thereon. The mayor shall preside at all meetings of the commission; he shall have no power to veto any measure, but every resolution or ordinance passed by the commission must be signed by the mayor, or by two members of the commission, and be filed and recorded within five days after its passage, and the same shall be in effect from and after thirty days after its passage, except as otherwise provided. [L. '11, p. 527, § 10.]

Cited in 64 Wash. 72.

§ 9100. [7670-11.] Powers Conferred—Departments.

Cities organized under the provisions of this act shall have all the powers which cities of the second class now have, or hereafter may have conferred upon them; all which said powers shall inhere in and be exercised by the commission provided for in this act. The executive and administrative powers, authority and duties in such cities under commission, shall be distributed into and among three departments, as follows:

- I. Department of public safety.
- II. Department of finance and accounting.
- III. Department of streets and public improvements.

The commission shall determine by ordinance the powers and duties to be performed in each department; shall prescribe the powers and

duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments, and may make such other rules and regulations as they may deem necessary or proper for the efficient and economical conduct of the business of the city. [L. '11, p. 528, § 11.]

Cited in 64 Wash. 72.

§ 9101. [7670-12.] Duties of Mayor—Removal.

The mayor shall be superintendent of the department of public safety, and the commission shall, at the first regular meeting after election of its members, designate by majority vote one commissioner to be superintendent of finance and accounting; and one to be superintendent of the department of streets and public improvements; but such designation may be changed whenever it appears that the public service would be benefited thereby.

The commission shall, at said first meeting, or as soon as practicable thereafter appoint by majority vote, a city clerk, and such other officers and assistants as shall be provided for by ordinance: Provided, that any officer or assistant, elected or appointed by the commission, may be removed from office at any time by vote of a majority of the members of the commission, except as otherwise provided in this act: Provided further, that any member of the commission may perform the duties pertaining to any and all appointive offices in his department, but without additional compensation therefor. [L. '11, p. 528, § 12.]

Cited in 64 Wash. 73.

§ 9102. [7670-13.] Change of Compensation.

The commission shall have power from time to time to create, fill and discontinue offices and employments other than those herein prescribed, according to their judgment of the needs of the city; and may, by majority vote of all the members, remove any such officers or employees, except as otherwise provided for in this act; and may by resolution, or otherwise prescribe, limit or change the compensation of such officers or employees. [L. '11, p. 529, § 13.]

§ 9103. [7670-14.] Salaries.

The commission shall have and maintain an office at the city hall, or such other place as the city may provide, and their total compensation shall be as follows: In cities having a population of two thousand five hundred (2,500) and less than five thousand (5,000) the annual salary of the mayor shall be five hundred dollars (\$500), and that of each of the commissioners two hundred and fifty dollars (\$250); in cities having a population of five thousand and less than eight thousand (8,000), the annual salary of the mayor shall be twelve hundred dollars (\$1,200), and that of each of the commissioners one thousand dollars (\$1,000); in cities having a population of eight thousand (8,000) and less than fourteen thousand (14,000) the annual salary of the mayor shall be two thousand dollars (\$2,000), and that of each of the commissioners eighteen hundred

dollars (\$1,800); and in cities having a population of fourteen thousand (14,000) and less than twenty thousand (20,000), the annual salary of the mayor shall be twenty-five hundred dollars (\$2,500), and that of each commissioner two thousand dollars (\$2,000). Such salaries shall be payable in equal monthly installments.

Every other officer or assistant shall receive such salary or compensation as the commission shall fix by ordinance and shall be payable monthly or at such shorter periods as the commission shall determine. [L. '11, p. 529, § 14.]

§ 9104. [7670-15.] Regular Meeting.

Regular meetings of the commission shall be held on the second Monday after the election of the commission, and thereafter at least once each week. The commission shall provide by ordinance for the time of holding regular meetings, and special meetings may be called from time to time by the mayor or two commissioners. All meetings of the commission, whether regular or special, shall be open to the public.

The mayor shall be president of the commission and preside at its meetings, and shall oversee all departments and report and recommend to the commission for its action all matters requiring attention in any department. The superintendent of the department of finance and accounting shall be vice-president of the commission, and in the absence or inability of the mayor, shall perform the duties of the mayor. [L. '11, p. 530, § 15.]

§ 9105. [7670-16.] Franchises.

Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in any city shall be granted, renewed or extended, except by ordinance; and every franchise or grant for interurban or street railways, gas or water works, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities within said city, must be authorized or approved by a majority of the electors voting thereon at a general or special election. [L. '11, p. 530, § 16.]

§ 9106. [7670-17.] Contracts—Special Privileges.

No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials, or claims or demands of any kind or nature whatsoever, or the profits thereof, or services to be furnished or performed for the city; and no officer or employee shall be interested directly or indirectly, in any contract or job for work or materials, or the profits thereof, or service to be furnished or performed for any person, firm or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange,

or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive directly or indirectly, from any person, firm or corporation operating within the territorial limits of said city, any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line or telephone exchange, or other business using or operating under a public franchise, any frank, free ticket or free service, or accept or receive, directly or indirectly, from any such person, firm or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor, and every such contract or agreement shall be void.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to city officials provided for by any franchise or ordinance be affected by this section. Any appointive officer or employee of such city who, by solicitation or otherwise, shall exert his influence to induce other officers or employees of such city to favor any particular candidate for any city office, or who shall in any manner contribute money, labor, or other valuable thing to any person for city election purposes, shall be discharged from his office by the commission. [L. '11, p. 531, § 17.]

§ 9107. [7670-18.] Print Statement.

The commission shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the newspapers of the city, and to persons who shall apply therefor at the office of the city clerk. At the end of each year the commission shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publications of statements of monthly expenditures. [L. '11, p. 532, § 18.]

§ 9108. [7670-19.] May Revise Appropriations.

If, at the beginning of the term of office of the first commission elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said commission shall have power, by ordinance, to revise said appropriations. [L. '11, p. 532, § 19.]

§ 9109. [7670-20.] Recall—Procedure.

The holder of any elective office may be removed at any time after six months of incumbency by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least thirty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which

petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing of such petition the city clerk shall examine and, from the registration books and the returns of the preceding municipal election, ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the commission shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of such examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the commission without delay, and the commission shall order and fix the date for holding the said election, not less than thirty days nor more than sixty days from the date of the clerk's certificate to the commission that a sufficient petition is filed: Provided, however, that in any case where the clerk shall find that the petition is insufficient, or in any case where the commission shall refuse to order an election, then in either of such cases any taxpayer may petition the superior court of such county, and such court shall forthwith examine the petition and, if it shall find the petition sufficient, then the court shall order that such election shall be held and the commission shall be required by the order of the court to hold such election.

The commission shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared, in all respects as are other city elections.

The commission shall call a special primary election for the purpose of nominating one candidate to oppose the incumbent sought to be removed, which said primary election shall be conducted, as nearly as may be, in the same manner as other primary elections under this act. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed shall be a candidate to succeed himself, unless he formally resigns his office, thereby creating a vacancy, and the city clerk shall place his name on the official ballot without nomination. In any such removal, the candidate receiving the highest number of votes shall be declared elected. At such election, if the candidate opposing the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor, which said qualification shall take place within ten days after receiving notification of election, otherwise the office shall be deemed vacant. If the incumbent

receives the highest number of votes he shall continue in office and shall not be subject to recall under the provisions of this section during the remainder of his term of office. The same method of removal shall be cumulative and additional to the methods heretofore provided by law. [L. '11, p. 532, § 20.]

Recall of officer under commission form of government. *Ann. Cas.* 1917C, 1132; *L. R. A.* 1916A, 1156.

§ 9110. [7670-21.] Ordinances—Special Elections.

Any proposed ordinance may be submitted to the commission by petition signed by electors of the city equal in number to the percentage hereinafter required. The signatures, verification, authentication, inspection, certification, amendment and submission of such petition shall be the same as provided for petition under section 9109.

If the petition accompanying the proposed ordinance be signed by electors equal in number to twenty-five per centum of the votes cast for all candidates for mayor at the last preceding general election, and if it contains a request that the said ordinance be submitted to a vote of the people, unless passed by the commission, it shall thereupon be the duty of the commission to either:

(a) Pass said ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition; or

(b) Forthwith after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the commission shall call a special election, unless a general municipal election will occur within ninety days thereafter, and at such special or general election such ordinance shall be submitted without alteration to the vote of the electors of said city.

The ballots used for voting upon said ordinance shall be similar to those used at the general municipal election, and shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance); and "Against the ordinance" (stating the nature of the proposed ordinance). If a majority of the qualified voters voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city, and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people, and on the margin of the record of such ordinances the city clerk shall write the words "Ordinance by petition No. ——" or "Ordinance by vote of the people," as the case may be.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purpose.

The commission may submit a proposition for the repeal of any such ordinance or for amendments thereto, to be voted upon at any such succeeding general city election, and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever

any ordinance or proposition is required by this act to be submitted to the voters of the city at an election, the city clerk shall cause such ordinance or proposition to be published once in each of the daily newspapers in said city, such publication to be not more than twenty or less than five days before the submission of such proposition or ordinance to be voted on: Provided, that if no daily newspaper is published in such city, then such publication shall be made in each of the weekly newspapers published therein.

All ordinances repealed or amended shall have placed on the margin of the record of said ordinance by the city clerk the words "repealed (or amended) by ordinance No. ____" or "repealed (or amended) by vote of the people," as the case may be. [L. '11, p. 534, § 21.]

§ 9111. [7670-22.] Becomes Effective, When.

No ordinance passed by the commission, except when otherwise required by the general laws of the state of Washington or by the provisions of this act, except an ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency and is passed by unanimous vote of the commission, shall go into effect before thirty days from the time of its final passage, and if during said thirty days a petition signed by electors of the city equal in number to at least twenty-five per centum of the entire vote cast for all candidates for mayor at the last preceding general municipal election at which a mayor was elected, protesting against the passage of such ordinance be presented to the commission, said ordinance shall thereupon be suspended from going into operation, and it shall be the duty of the commission to reconsider such ordinance and if the same is not entirely repealed, the commission shall submit the ordinance as is provided by subsection "b" of section 9110, to the vote of the electors of the city, either at the general election or at a special municipal election to be called for that purpose, and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of section 9110, and be examined and certified to by the clerk in all respects as therein provided: Provided, this section shall not apply to ordinances providing for local improvement districts. [L. '11, p. 536, § 22.]

Cited in 112 Wash. 467.

This section does not prevent the going into effect, upon its passage and publication, of an ordinance submitting a propo-

sition to the voters, thereby, in effect, providing within itself for a referendum: Langdon v. Walla Walla, 112 Wash. 446, 193 Pac. 1.

§ 9112. [7670-23.] Abandonment of Organization.

Any city which shall have operated for more than six years under the provisions of this act may abandon such organization hereunder and accept the provisions of the general law of the state of Washington applicable to cities of its population.

Upon the petition of not less than twenty-five per centum of the electors of such city a special election shall be called, to which the following proposition only shall be submitted: "Shall the city of (name of

city) abandon its organization as a city under commission and become a city under the general laws governing cities of like population?"

If a majority of the votes cast at such special election be in favor of such proposition the said city shall become organized under the general law and the first election of city officers under the general law shall be held on the date of the next general city election of cities of its class; but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such city, but shall merely extend to such change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided by section 9109, in so far as the provisions thereof are applicable. [L. '11, p. 537, § 23.]

§ 9113. [7670-24.] Petition by Legal Voters.

Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made. [L. '11, p. 537, § 24.]

CHAPTER XI.

GOVERNMENT OF THIRD CLASS CITIES.

§ 9114. [7671-1.] Rights, Powers and Privileges.

Every municipal corporation of the third class shall be entitled "The City — (naming it)," and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit. [L. '15, p. 650, § 1.]

§ 9115. [7671-2.] Officers.

The government of said city shall be vested in a mayor and a city council, to consist of seven members, a treasurer, a city attorney, a clerk, and such subordinate officers as are hereinafter provided for; and whenever a free public library and reading-room is established therein, five trustees thereof, and whenever a public park is maintained, three commissioners therefor. [L. '15, p. 650, § 2.]

§ 9116. [7671-3.] Election and Terms.

The mayor, councilman-at-large, treasurer, city attorney and clerk shall be elected in the year 1915 for the term of one year. Such officers shall be elected in the year 1916 and biennially thereafter for terms of two years. Three councilmen, other than councilman-at-large, shall be elected in the year 1915 for terms of three years. Three councilmen, other

than councilman-at-large, shall be elected in the year 1916 and biennially thereafter for terms of four years. All such elections shall be by the qualified electors of such city at a general municipal election to be held therein on the first Tuesday after the first Monday in December. All elective officers shall hold office from and after the first Tuesday in January next succeeding the date of election and until their successors are elected and qualified. The mayor shall appoint a chief of police, police judge, city engineer, street superintendent, health officer and such other officers as shall be provided by ordinance. The term of every appointive officer shall expire at the same time as that of the mayor appointing him unless such officer be sooner removed by the mayor by and with the consent of not less than four councilmen. [L. '15, p. 650, § 3.]

§ 9117. [7671-4.] Confirmation of Appointments.

All appointments of officers and employees made by virtue of this act, shall be subject to confirmation by the city council. Final action on any appointment shall be taken by the city council not later than the second regular meeting after the submission of the same by the mayor to the city council: Provided, however, that failure by the city council to take such action on any appointment made by the mayor, within the time aforesaid, shall be deemed a confirmation. If the city council shall refuse to confirm any appointment of the mayor, then he shall at or before the next meeting of the council thereafter, appoint another person to fill the office or position, and he may continue to appoint until his appointment is confirmed. In case the mayor fails to make another appointment within one week from the rejection of the appointment for the same office or position, then the city council may elect a suitable person to fill the office or position during the term. [L. '15, p. 651, § 4.]

§ 9118. [7671-5.] Oath and Bond.

The treasurer, city attorney, clerk, police judge, chief of police and such other officers as the council may require shall each, before entering upon the duties of his office, take an oath of office and execute a bond to the city in such penal sum as the council shall determine, conditioned upon the faithful performance of his duties and otherwise conditioned as may be provided by ordinance. [L. '15, p. 651, § 5.]

§ 9119. [7671-6.*] Vacancies, How Filled.

Any vacancy occurring in any of the offices provided for in this chapter shall be filled by appointment by the mayor, but if such office be elective, such appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term. In case a member of the city council shall absent himself for three consecutive regular meetings thereof, unless by permission of the city council, his office may be declared vacant by the city council, and any vacancies in the city council or in the office of mayor shall be filled by a majority vote of such city council. A temporary vacancy in any of the appointive offices provided for in this chapter caused by illness, absence from the city or other temporary

inability to act of the incumbent, may be filled by appointment by the mayor; such appointee to exercise the duties of the office until the said temporary disability is removed. [L. '19, p. 275, § 1; L. '15, p. 651, § 6.]

§ 9120. [7671-7.] Compensation Fixed by Ordinance or Estimates.

The members of the city council shall receive no compensation whatever. The treasurer, clerk, city attorney and health officer shall severally receive, at stated times, a compensation, to be fixed by ordinance by the city council, which compensation shall not be increased or diminished after their election, or during their several terms of office. Nothing herein contained shall be construed to prevent the city council from fixing such several amounts of compensation, in the first instance, during the term of office of any such officer or after his election. The compensation of all other officers shall be fixed by the city council at the time the estimates are made as provided by law. [L. '15, p. 652, § 7.]

§ 9121. [7671-8.] Election Regulations.

All elections shall be held in accordance with the general election laws of the state in so far as the same are applicable and no person shall be entitled to vote at any election unless he shall be a qualified elector of the county and shall have resided in such city for at least thirty days next preceding such election. The city council shall give such notice of each election as may be provided by ordinance, appoint boards of election, fix their compensation, establish election precincts and polling places, change the same from time to time so that the boundaries of such election precincts shall conform to the boundaries of precincts established pursuant to the general election laws. [L. '15, p. 652, § 8.]

§ 9122. [7671-9.] Eligibility to Office.

No person shall be eligible to hold any elective office in such city, unless he be a citizen of and a legal resident therein. [L. '15, p. 652, § 9.]

§ 9123. [7671-10.] Meetings of Council.

The city council, together with the mayor, shall meet on the first Tuesday in January next succeeding the date of each general municipal election, shall take the oath of office, and shall hold regular meetings at least once in each month, but not to exceed one regular meeting in each week, at such times as they shall fix by ordinance. Such meetings may be called at any time by the mayor, by written notice delivered to each member at least three hours before the time specified for the proposed meeting: Provided, however, that no ordinance shall be passed, or contract let, or entered into, or bill for the payment of money allowed, at any special meeting. All meetings of the city council shall be held within the corporate limits of the city at such place as may be designated by ordinance and shall be public. The members of the council shall, at their first regular meeting after each general municipal election and thereafter whenever a vacancy occurs, elect from among their number a mayor pro tem. who shall hold office at the pleasure of the council and shall, in case of the absence or disability of the mayor, perform the duties of mayor,

except that the mayor pro tem. shall have no power to appoint or remove any officer nor to veto any ordinance. [L. '15, p. 652, § 10.]

§ 9124. [7671-11.] Quorum—Passage of Ordinances—Veto.

At any meeting of the city council, a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The mayor shall preside at all meetings of the council, and in case of his absence, the mayor pro tem. shall preside, and in case of the absence of the clerk, the mayor or the mayor pro tem. shall appoint one of the members of the city council as clerk pro tem., but the appointment of a councilman as mayor pro tem., or as clerk pro tem., shall not in any way abridge his right to vote upon all questions coming before such council. Every ordinance which shall have passed the city council shall be, before it becomes valid, presented to the mayor; if he approves he shall sign it, but if not, he shall return it, with his written objections to the city council and the council shall cause such written objections to be entered at large upon the journal of its proceedings. Upon receipt of the mayor's objections the council shall proceed to reconsider the vote by which the ordinance was passed. After such reconsideration, five members of the city council present and voting may, by an affirmative vote, pass the ordinance over the mayor's veto; such vote shall be taken by a call of the yeas and nays. If the mayor shall fail, for the period of ten days, to approve or veto an ordinance, it shall become valid without his approval. [L. '15, p. 653, § 11.]

§ 9125. [7671-12.] Requisites for Ordinances and Franchises.

No ordinance and no resolution granting any franchise for any purpose shall be passed by the city council, on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, nor without being first submitted to the city attorney. All ordinances shall be published in a newspaper printed within said city; said publication shall be made by the newspaper designated as the official newspaper of said city, if there be one. If there be no official newspaper nor other newspaper published in said city, then publication shall be made in such manner as the city council may direct. No franchise or valuable privilege shall be granted unless by the vote of at least five members of the city council. No ordinance and no resolution or order shall have any validity or effect, unless passed by the votes of at least four councilmen. No ordinance shall take effect until five days from and after the date of its publication. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. No ordinance or any section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section revised or amended, and the ordinance or section so amended shall be repealed. [L. '15, p. 654, § 12.]

§ 9126. [7671-13.] Contested Elections—Rules and Proceedings.

The city council shall judge of the qualifications of its members and of all election returns, and determine contested elections of all the city

officers. They may establish rules for the conduct of their proceedings, and punish any member, or other person, for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and at the desire of any member shall cause the ayes and naves to be taken on any question, and entered on the journal. [L. '15, p. 654, § 13.]

§ 9127. [7671-14.] City Council—General Powers.

The city council of such city shall have power—

(a) To pass ordinances not in conflict with the Constitution and laws of this state or of the United States;

(b) To prevent and regulate the running at large of any or all domestic animals within the city limits or any part thereof and to cause the impounding and sale of any such animals;

(c) To establish, build and repair bridges, to establish, lay out, alter, keep open, open, widen, vacate, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the city, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish and re-establish the grades thereof; to grade, plank, pave, macadamize, gravel and curb the same, in whole or in part; to construct gutters, culverts, sidewalks and crosswalks therein or upon any part thereof; to cultivate and maintain parking strips therein, and generally to manage and control all such highways and places; to provide by local assessment for the leveling up and surfacing and oiling or otherwise treating for the laying of dust, all streets within the city limits: Provided that in all local improvement districts abutting property shall not be liable for any greater amount than the estimate of the city engineer plus ten per cent for any purpose;

(d) To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets and alleys or within two hundred feet thereof along which sewers shall have been constructed to make proper connections therewith and to use the same for proper purposes, and in case the owners of the property on such streets and alleys or within two hundred feet thereof shall fail to make such connections within the time fixed by such council, they may cause such connections to be made and to assess against the property served thereby the costs and expenses thereof;

(e) To provide fire-engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

(f) To impose and collect an annual license not exceeding two dollars on every dog owned or harbored within the limits of the city; to prohibit dogs running at large and to provide for the killing of all dogs not duly licensed found at large;

(g) To license, for the purposes of regulation and revenue, all and every kind of business authorized by law, and transacted and carried on in such city, and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof, to fix the rate of license tax upon the same, and to provide for the collection of the same by suit or otherwise;

(h) To improve rivers and streams flowing through such city, or adjoining the same; to widen, straighten and deepen the channel thereof, and remove obstructions therefrom; to improve the waterfront of the city, and to construct and maintain embankments and other works to protect such city from overflow; to prevent the filling of the water of any bay, except such filling over tide or shore lands as may be provided for by order of the city council; to purify and prevent the pollution of streams of water, lakes or other sources of supply, and for this purpose shall have jurisdiction over all streams, lakes or other sources of supply, both within and without the city limits. Such city shall have power to provide by ordinance and to enforce such punishment or penalty as the city council may deem proper for the offense of polluting or in any manner obstructing or interfering with the water supply of such city or source thereof;

(i) To erect and maintain buildings for municipal purposes;

(j) To permit, under such restrictions as they may deem proper, and to grant franchises for, the laying of railroad tracks, and the running of cars propelled by electric, steam or other power thereon, and the laying of gas and water-pipes and steam mains and conduits for underground wires, and to permit the construction of tunnels or subways in the public streets, and to construct and maintain and to permit the construction and maintenance of telegraph, telephone and electric lines therein;

(k) In its discretion to divide the city by ordinance, into a convenient number of wards, not exceeding six, to fix the boundaries thereof, and to change the same from time to time: Provided, that no change in the boundaries of any ward shall be made within sixty days next before the date of such general municipal election, nor within twenty months after the same shall have been established or altered. Whenever such city shall be so divided into wards, the city council shall designate by ordinance the number of councilmen to be elected from such ward, apportioning the same in proportion to the population of such wards. And thereafter the councilmen so designated shall be elected by the qualified electors resident in such ward, or by general vote of the whole city as may be designated in such ordinance: Provided, further, that when additional territory is added to the city that it thereafter, by act of the council, be annexed to contiguous wards without affecting the right to redistrict at the expiration of twenty months after last previous divisions. The removal of a councilman from the ward for which he was elected shall create a vacancy in such office;

(l) To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed three hundred dollars nor the term of such imprisonment exceed the term of three months;

(m) To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other public property or works within the city;

(n) To establish fire limits, with proper regulations;

(o) To establish and maintain a free public library;

(p) To establish and regulate public markets and market places;

(q) To punish the keepers and inmates and lessors of houses of ill fame, gamblers and keepers of gambling tables, patrons thereof or those found loitering about such houses and places;

(r) To make all such ordinances, by-laws, rules, regulations and resolutions, not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the corporation and its trade, commerce and manufactures, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter, and to enact and enforce within the limits of such city all other local, police, sanitary and other regulations as do not conflict with general laws;

(s) To license steamers, boats and vessels used in any bay or other watercourse in the city and to fix and collect such license; to provide for the regulation of berths, landings, and stations, and for the removing of steamboats, sail boats, sail vessels, rafts, barges and other water craft; to provide for the removal of obstructions to navigation and of structures dangerous to navigation or to other property, in or adjoining the waterfront, except in municipalities in counties in which there is a city of the first class. [L. '15, p. 655, § 14.]

The power of third class cities to grant franchises for the use of their streets confers no authority for the alteration of such franchises subsequent to their grant so as to impose additional obligations on the holder in the matter of street paving differing from the conditions of the franchise contract: State ex rel. Olympia v. Olympia Light & Power Co., 91 Wash. 519, 158 Pac. 85.

§ 9128. [7671-15.] Acquisition of Property for Municipal Purposes.

The city council of such city shall have power to purchase, lease, or otherwise acquire real estate and personal property necessary or proper for municipal purposes and to control, lease, sublease, convey or otherwise dispose of the same; to acquire and plat land for cemeteries and parks and provide for the regulation thereof; to lease any waterfront and other lands adjacent thereto owned by it for manufacturing, commercial or other business purposes; to lease for wharf, dock and other purposes of navigation and commerce such portions of its streets which bound upon or terminate in its waterfront or the navigable waters of such city, subject, however, to the written consent of the lessees of a majority of the square feet frontage of the harbor area abutting on any street proposed to be so leased. No lease of streets or waterfront shall be for longer than ten years and the rental therefor shall be fixed by the city council. Every such lease shall contain a clause that at intervals of every five years during the term thereof the rental to be paid by the lessee shall be readjusted between the lessee and the city by mutual agreement, or in default of such mutual agreement that the rental shall be fixed by arbitrators to be appointed one by the city council, one by the lessee and the third by the two thus appointed. No such lease shall be made until the city council shall have first caused notice thereof to be published in the official newspaper of such city at least fifteen days and in one issue thereof each week prior to the making of such lease, which notice shall describe the portion of the street proposed to be leased, to whom, for what purpose, and the rental to be charged therefor. The city may improve part of such waterfront or street extensions by building inclines, wharves, gridirons and

other accommodations for shipping, commerce and navigation and may charge and collect for service and use thereof reasonable rates and tolls. [L. '15, p. 658, § 15.]

§ 9129. [7671-16.*] Light, Water, Power and Heat—Operation by City.

The city council of such city shall have power to contract for supplying the city with water, light, power and heat for municipal purposes; to acquire, construct, repair and manage within or without such city, pumps, aqueducts, reservoirs, plants or other works necessary or proper for irrigation purposes or for supplying water, light, power or heat or any by-product thereof for the use of such city or the inhabitants thereof or any other person within such city, and to dispose of any excess of any such supply to any person within or without such city: Provided, that when such works or systems are owned by any city after being placed in operation no taxes shall be imposed for maintenance or operation, but such charges shall be paid from the earnings of such works or systems. Maintenance and operation herein mentioned shall include all necessary repairs, replacements, interest on any debts incurred in acquiring, constructing, repairing or operating such plants or departments, and all depreciation charges, also four per cent per annum on the cost of such plant or system, which shall be determined by the bureau of inspection, to be paid into the current expense fund, except that where utility bonds have been or may hereafter be issued and are unpaid no payment shall be required into the current expense fund until such bonds are paid. General bonds may be issued to pay the original cost of such plants or systems, such bonds to be retired by general tax levies against all property of the city within its then present limits or such limits as thereafter extended, or such cost may be paid for by the issuance and sale of utility bonds as provided by sections 9489 to 9491, both inclusive, or as the same may be amended, but no such issue shall be authorized by the vote of less than three-fifths of the qualified electors voting at an election as therein provided. Extensions to plants may be made either by general bond issue, general tax levies, or in accordance with the statutes now in force or that may hereafter be enacted relative to local improvements. Rates shall be fixed by ordinance for supplying light, power, heat or water for commercial, domestic and irrigation purposes sufficient to pay all operating and maintenance charges hereinbefore referred to, and when a greater amount is produced than is necessary to meet said operating and maintenance charges the rates to the consumer may be reduced, or such excess amount over and above what is necessary for said operating and maintenance charges may be transferred to the current expense fund or to the indebtedness fund, at the option of the city council. Complete separate accounts for such municipal utilities shall be kept under the system and on forms prescribed by the bureau of inspection and supervision of public offices. [L. '17, p. 496, § 1; L. '15, p. 659, § 16.]

§ 9130. [7671-17.*] Limit of Tax Levy.

Any such city shall have power through its council to levy and collect annually, a property tax for the payment of current expenses not exceeding fifteen mills on the dollar of assessed valuation: Provided,

that if the qualified electors of said city at a special election to be held for that purpose should vote in favor of a larger levy for the payment of current expenses, than fifteen mills on the dollar of assessed valuation, a larger levy for said purpose may accordingly be made: Provided, further, that the affirmative vote of three-fifths of the electors voting at such election shall be necessary to authorize such levy. [L. '19, p. 489, § 1; L. '15, p. 660, § 17.]

§ 9131. Percentage of Levy for Special Improvement.

When the city council of any such city does by unanimous vote so decide it may use not to exceed two mills of said levy in creating a special fund for any special improvement or purpose authorized by existing laws; such purpose to be specifically designated by resolution of said council when creating said fund and said fund shall not be used for any purpose other than authorized by said resolution except by unanimous vote of said council. [L. '19, p. 490, § 2.]

§ 9132. [7671-18.] Enacting Clause of Ordinances—Publication.

The enacting clause of all ordinances shall be as follows: "The city council of the city of — do ordain as follows": Every ordinance shall be signed by the mayor, attested by the clerk, and published at least once in a newspaper published in such city, or printed and posted in at least three public places therein. [L. '15, p. 660, § 18.]

§ 9133. [7671-19.] Audit of Demands—Warrants.

All demands against such city shall be presented to and audited by the city council, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the clerk shall draw a warrant upon the treasurer for the same, which warrant shall be countersigned by the mayor, and shall specify for what purpose the same is drawn, and out of what fund it is to be paid. [L. '15, p. 661, § 19.]

§ 9134. [7671-20.] Violation of Ordinances—Prosecution and Punishment.

The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city in the name of the people of the state of Washington, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the city jail, or if the city council by ordinance shall so prescribe, in the county jail of the county in which such city may be situated; in which case the expense of such imprisonment shall be a charge in favor of such county and against such city. [L. '15, p. 661, § 20.]

Cited in 99 Wash. 219.

A criminal complaint for the violation of a city ordinance, entitled in the name of the city as plaintiff, sufficiently complies with this section where the charge in the body of the complaint clearly in-

formed the accused that he was being prosecuted for violation of the ordinance in the proper court, and the warrant issued commanded his arrest in the name of the state: *Puyallup v. Crosby*, 99 Wash. 218, 169 Pac. 322.

§ 9135. [7671-21.] Nuisances.

Every act or thing done or being within the limits of such city, which is or may be declared by law or by any ordinance of such city to be a nuisance, shall be and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto. [L. '15, p. 661, § 21.]

§ 9136. [7671-22.] Condemnation of Private Property.

Whenever it shall become necessary for the city to take or damage private property for the purpose of establishing, laying out, extending and widening streets and other public highways and places within the city, or for the purpose of securing rights of way for drains, sewers and aqueducts, and for the purpose of widening, straightening or diverting the channels of streams and the improvement of waterfronts, or any other public purpose, and the city council cannot agree with the owner thereof as to the price to be paid, the city council may proceed to acquire, take or damage the same in the manner provided by sections 921-936, or by sections 9215 to 9279, both inclusive, and acts amendatory thereof. [L. '15, p. 661, § 22.]

§ 9137. [7671-23.] Power of Mayor to Administer Oaths.

The mayor and mayor pro tempore shall have power to administer oaths and affirmations, and take affidavits, and certify the same under their hands. The mayor or in the absence of the mayor the mayor pro tempore shall sign all conveyances made by said city, and all instruments which shall require the seal of the city, and shall have power to administer oaths and affirmations, take affidavits and certify the same under their hands. [L. '15, p. 662, § 23.]

§ 9138. [7671-24.] Duties of Treasurer.

The treasurer shall receive and safely keep all moneys which shall come into his hands as such treasurer, for all of which he shall give triplicate receipts, one of which shall be filed with the city clerk. He shall receive all moneys due the city and disburse the same on warrants issued by the clerk and countersigned by the mayor, and not otherwise. He shall make monthly settlements with the city clerk, and at the same time deliver to the clerk duplicate receipts issued for money received, and all canceled warrants as evidence of money paid. [L. '15, p. 662, § 24.]

§ 9139. [7671-25.] Duties of Clerk.

The city clerk shall keep a full, true record of every act and proceeding of the city council; keep such books, accounts and make such reports as may be prescribed or required by the state bureau of inspection and supervision of public offices; record all city ordinances with his certificate annexed to said copy, stating the foregoing ordinance is a true and correct copy and giving the number and title of said ordinance and stating the same has been published and posted according to law. Said record copy with said certificate, shall be prima facie evidence of the con-

tents of said ordinance, and of the passage and publication thereof, and shall be admissible as such evidence in any court or proceeding. He may appoint a deputy for whose acts he and his bondsmen shall be held responsible and he and his deputy shall have the power to take all necessary affidavits to demands against the city and certify the same without charge. He shall be custodian of the seal of said city and shall have power to acknowledge the execution of all instruments by said city which require to be acknowledged. He shall perform such other duties as this act, the state laws and the ordinances of the city shall require. [L. '15, p. 662, § 25.]

§ 9140. [7671-26.] Duties of City Attorney.

It shall be the duty of the city attorney to advise the city authorities and officers in all legal matters pertaining to the business of said city and to approve all ordinances as to form. He shall represent the city in all actions brought by or against the city or against city officials in their official capacity. He shall perform such other duties as the city council may by ordinance direct. [L. '15, p. 663, § 26.]

§ 9141. [7671-27.] Powers and Duties of Chief of Police.

The department of police of said city shall be under the direction and control of the chief of police, subject to the direction of the mayor. For the suppression of any riot, public tumult, disturbance of the peace or resistance against the laws or public authorities in the lawful exercise of their functions the chief of police shall have the powers that are now or may hereafter be conferred upon sheriffs by the laws of the state, and shall in all respects be entitled to the same protection. His lawful orders shall be promptly executed by deputies, police officers and watchmen in said city, and every citizen shall also lend him aid when required, for the arrest of offenders and maintenance of public order. He shall have power to pursue and arrest outside of the city limits, if necessary, all or any violators of the city ordinances. He shall and is hereby authorized to execute and return all process issued and directed to him by any legal authority. It shall be his duty to prosecute, before the police justice, all breaches or violations of, or noncompliance with, any city ordinance which shall come to his knowledge. He shall have charge of the city prison and prisoners, and of any chain gang which may be established by the city council. He shall for services of any process receive the same fees as constables. He may also, with the concurrence of the mayor, when the same may be by them deemed necessary for the preservation of public order, appoint additional policemen who shall discharge the duties assigned them for one day only. He shall perform such other services as this chapter and the ordinances of the city council shall require, and shall receive such compensation as shall be fixed by ordinance. [L. '15, p. 663, § 27.]

§ 9142. [7671-28.] Additional Duties and Compensation.

The city council shall, by ordinance not inconsistent with the provisions of this chapter, prescribe additional duties of all officers and fix their compensation. [L. '15, p. 664, § 28.]

§ 9143. [7671-29.*] Police Judge—Jurisdiction—Fines—Jury Trial—Appeal.

At the time he shall make his other appointments, the mayor shall appoint a police judge who shall be the regular elected justice of the peace in all cities of the third class, having a population of five thousand or more, if there be any such justice of the peace present in the said city and not under any disability. Said police judge shall, before entering upon the duties of his office, give such additional bond to the city for the faithful performance of his duties as the city council may by ordinance direct, and shall receive such salary in addition to his salary as justice of the peace as the council shall by ordinance direct. The police judge so appointed, in addition to his powers as justice of the peace, shall have exclusive jurisdiction over all offenses defined by any ordinance of the city, and all other actions brought to enforce or recover any license, penalty or forfeiture declared or given by any such ordinance, and full power to forfeit bail bonds and issue execution thereon and full power to forfeit cash bail, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinance, and pronounce judgment in accordance therewith: Provided, that for the violation of a criminal ordinance no greater punishment shall be imposed than a fine of three hundred dollars (\$300), or imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. In the trial of actions brought for the violation of any city ordinance, no jury shall be allowed. All civil or criminal proceedings before such police judge and judgments rendered by him shall be subject to review in the superior court of the proper county by writ of review or appeal. In actions brought before such police judge to enforce or recover any license, penalty or forfeiture declared or given by any ordinance, and in all other civil actions, the manner of commencing the same, the manner of obtaining service upon the defendants, the procedure during the pendency of the action and for the enforcement of the judgment obtained, if any, and the procedure in appeal therefrom, together with the time limitations upon such appeals, shall be as provided in the case of civil actions before justices of the peace. [L. '19, p. 275, § 2; L. '15, p. 664, § 29.]

Jurisdiction: See notes to §§ 44, 46, *supra*.

Cited in 98 Wash. 507; 104 Wash. 650.

A change of venue will not lie from the police court of a city of the third class to a justice court, when the action is to recover a penalty or fine declared by city ordinance which exceeds \$100 in amount; in view of this section: State

ex rel. Kiggins v. Woolson, 98 Wash. 505, 167 Pac. 1088.

The prosecution for the violation of a city ordinance is exclusively vested in the police judge of the city: *State ex rel. Kiggins v. Hadley*, 104 Wash. 648, 177 Pac. 655.

§ 9144. [7671-30.] Disposition of Moneys Collected.

Every officer collecting or receiving any moneys belonging to or for the use of such city shall settle for the same with the clerk, and immediately pay the same into the treasury, on the order of the clerk for the benefit of the funds to which such moneys respectively belong. [L. '15, p. 665, § 30.]

§ 9145. [7671-31.] Bids for Contracts—City Printing and Advertising.

In the erection, improvement and repair of all public buildings and works, in all streets and sewer work, and in all work in or about streams, bays or waterfronts or in or about embankments, or other works for protection against overflow and in furnishing any supplies or materials for the same, when the expenditure required for the same exceeds the sum of five hundred dollars, the same shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulations as may be prescribed by ordinance: Provided, that the city council may reject all bids presented, and readvertise, in their discretion, or if in the judgment of the council such work can be performed or supplied or materials furnished by the city independent of contract cheaper than under the lowest and best bid submitted, it may cause such work to be performed or supplies or materials to be furnished independent of contract. The city council shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest bidder after notice as provided in this section. All advertising shall be done in a newspaper printed and published in such city, and the contract therefor shall be awarded separately from all the other printing. [L. '15, p. 665, § 31.]

§ 9146. [7671-32.] Officers not to be Interested in Contracts.

No officer of such city shall be interested, directly or indirectly, in any contract with such city, or with any of the officers thereof, in their official capacity, or in doing any work or furnishing any supplies for the use of such city or its officers in their official capacity; and any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed, shall not be paid by the treasurer. Any person who is resident agent for, or local dealer in, the goods and supplies of any person, firm or corporation furnishing such goods and supplies for the use of such city, or to any officer thereof in his official capacity, or to any contractor for use in the performance of any contract with such city, shall be ineligible to hold office in said city; and any officer of such city who shall be resident agent for, or local dealer in, the goods and supplies of any person, firm or corporation, furnishing such goods and supplies for the use of such city, or to any officer thereof in his official capacity, or to any contractor for use in the performance of any contract with such city, shall be deemed to be interested as contemplated herein. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such. [L. '15, p. 665, § 32.]

§ 9147. [7671-33.] Sinking Funds.

The city council shall have the power to provide by ordinance for the establishment of sinking funds and to levy taxes therefor, for the payment of indebtedness and to provide for the investment thereof in county, city or school district warrants and municipal public utilities or local improvement securities of such, or other municipal corporations

subject to approval of the state bureau of inspection and supervision of public offices. [L. '15, p. 666, § 33.]

§ 9148. [7671-34.] Codifying Ordinances.

Said city shall have the power to codify its ordinances and to adopt by general title such codified ordinances as the official code of ordinances for said city. Any ordinances now in effect in cities of the third class, not inconsistent with the provisions of this act, are hereby continued in effect. [L. '15, p. 666, § 34.]

§ 9149. [7671-35.] Repealing Clause.

All acts in conflict with the provisions of this act so far as they affect cities of the third class are hereby repealed; but this act shall not be construed to abrogate the power of cities of the third class to proceed, nor to limit, or modify its rights and liabilities under any general statutes now in effect, which are applicable to such cities, nor shall this act be construed in any way to affect chapter X of this Title: Provided, that sections 8061-8077, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington relating to firemen's pension fund, shall not be applicable to cities of the third class. . . . Section 5637 of this code [as amended by the Laws of 1913], shall have no application to cities of the third class so far as placing any limitation on the tax levy of such cities is concerned. [L. '15, p. 666, § 35.]

This section adopted. For sections expressly repealed by this section, see Laws '15, p. 666, § 35.

"Sections 8061-8077," relating to firemen's pension fund, have been repealed.

"Section 5637" has been amended since the act of 1913.

"Chapter X of this title": See §§ 9090 to 9113, relating to commission form of government.

Cited in 98 Wash. 507; 104 Wash. 651.

§ 9150. [7671-36.] Partial Invalidity.

If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. [L. '15, p. 667, § 36.]

§ 9151. [5140-1.*] Funds and Tax Levies in Third Class Cities.

Every city of the third class having an outstanding indebtedness at the time of levying its taxes for the year 1916 shall levy for said year, and each year thereafter until all outstanding indebtedness has been paid shall levy, a tax of six mills on the dollar of the assessed valuation of property in such city, unless in any year a lesser levy will be sufficient to pay all outstanding indebtedness, in which event such lesser levy sufficient for such purpose shall be made. The proceeds of such tax together with all moneys received from licenses, street poll tax, fines, penalties and forfeitures and together with all taxes levied for the year 1915 or any previous year for the current expense fund, old indebtedness fund, general fund, street fund, sewer fund, library fund, park fund or other like fund and paid on or subsequent to January 1, 1916, shall be paid into a fund to be known as the "indebtedness fund": Provided, that

all moneys received from licenses, street poll tax, fines, penalties and forfeitures subsequent to July 1, 1917, shall be paid into the current expense fund: And provided, that all tax levies and validated tax levies and all parts of each thereof made for the payment of the current expenses of any such city for the fiscal years 1914 and 1915 shall when collected be paid into a separate fund to be known as the 1914 and 1915 current expense fund and applied primarily to the payment of the current expenses of such city for the fiscal year for which the same were levied or validated. In computing such outstanding indebtedness all indebtedness of every character shall be included excepting indebtedness for the payment of which special provision is made by law and by said city and bonded indebtedness for the payment of which an adequate sinking fund is provided. [L. '17, p. 207, § 1; L. '15, p. 668, § 1.]

§ 9152. [5140-2.] Payment of Outstanding Indebtedness — Apportionment of Funds.

Except as otherwise provided in section 9151, all indebtedness outstanding upon January 1, 1916, shall be paid out of said indebtedness fund, all outstanding warrants to be paid out of said indebtedness fund in the order of their issuance and if issued upon the same day and the order of issuance does not appear they shall be paid in the order of their presentation: Provided, that if there be outstanding on said date a general fund indebtedness and a current expense fund indebtedness of any such city the moneys derived from the six mill levy herein provided for shall, so long as any indebtedness remains against both said funds, be apportioned between said funds and applied to the payment of the outstanding warrants against the same in proportion to the outstanding indebtedness against said funds in the order above provided. Whenever all indebtedness of such city which was outstanding upon January 1, 1916, has been paid, any surplus remaining in said indebtedness fund shall be paid into the "Current Expense Fund" of such city, and thereafter all receipts of said city which would theretofore have been paid into said indebtedness fund shall be paid into said current expense fund. [L. '15, p. 669, § 2.]

§ 9153. [5140-3.] "Current Expense Fund" Created—Tax Levy.

There shall be in each city of the third class a fund to be known as the "Current Expense Fund." Each such city shall levy for the year 1916 and for each year thereafter a tax upon the property in such city for the payment of current expenses in an amount equal to the estimate by the city council of the current expenses for the ensuing year less the amount of revenues from all other sources payable into such current expense fund, the proceeds of which tax shall be paid into such current expense fund except as otherwise provided in this act. All moneys in the general fund, old indebtedness fund, old "Current Expense Fund" if such shall have been continued, street fund, sewer fund, library fund, park fund or other like fund upon January 1, 1916, which were paid into any such fund prior to said day, shall be transferred to the current expense fund created by this act and thereafter every such general fund, old indebtedness fund, old "Current Expense Fund," street fund, sewer

fund, library fund, park fund or other like fund shall be discontinued and abolished. [L. '15, p. 669, § 3.]

Cited in 108 Wash. 50.

The cost of erecting a city hall does not come within, and cannot be paid out

of, a city's "current expense fund": State ex rel. Republic v. Harvey, 108 Wash. 48, 182 Pac. 931.

§ 9154. Validation of Certain Indebtedness.

That from and after the passage of this act the city council of any city of the third class in this state shall have the power, and it shall be lawful for it, by unanimous vote of all the members thereof, to ratify and validate by resolution to that effect, all claims or obligations contracted or otherwise incurred by the city council of any such city at any time between the first day of January, 1913, and the twentieth day of March, 1915, and invalid or void because contracted, allowed or otherwise incurred by the city council of any such city in violation of the provisions of section 7702 or section 7694 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and order the same paid and direct the issuance of warrants therefor, and it shall be lawful for, and the duty of, the treasurer of any such city to pay all warrants ordered issued by the city council of any such city under the terms and provisions of this act. [L. '19, p. 32, § 1.]

An act validating past levies is constitutional: Owings v. Olympia, 88 Wash. 289, 152 Pac. 1019.

The act of 1915 validates all excess levies mentioned except in cities where no taxpayer had paid the excess tax at the time of the passage of the validat-

ing act; this construction of "attempt to collect," when cities have no power to make the collection or to cancel the tax, being necessary to avoid an obvious absurdity: Northern Pac. R. Co. v. Snohomish County, 101 Wash. 686, 172 Pac. 878.

CHAPTER XII.

THIRD AND FOURTH CLASS CITIES—CONSTRUCTION OF SIDEWALKS.

§ 9155. [7718-1.] At Expense of Abutting Property.

In all cities and towns of the third or fourth class the burden and expense of constructing sidewalks along the side of any street or other public place shall devolve upon and be borne by the property directly abutting thereon. [L. '15, p. 423, § 1.]

§ 9156. [7718-2.] Resolution for Improvement—Notice to Owner to Construct.

Whenever in the judgment of the officer or department having the care and superintendence of streets and public places in any such city or town, the public convenience or safety requires that a sidewalk be constructed along either side of any street or other public place in such city or town, said officer or department shall immediately report the fact to the city council, city commission or other legislative body of such city or town, and if such legislative body shall deem the construction of such sidewalk necessary or convenient for the public it shall by resolution order such sidewalk constructed and shall cause a notice in writing to be served upon the owner of each lot, block or parcel of land immediately abutting upon that portion and side of such street or public

place where said sidewalk is to be constructed requiring him to construct such sidewalk in accordance with such resolution. [L. '15, p. 423, § 2.]

§ 9157. [7718-3.] Specifications in Resolution and Notice.

The resolution and notice provided for in the preceding section shall describe each lot, block or parcel of land immediately abutting upon that portion of the street or other public place where said sidewalk is ordered to be constructed and shall specify the kind of sidewalk required, the size and dimensions of the same, the method and the material to be used in construction and shall contain an estimate of the cost thereof, and the notice shall state that unless the sidewalk is constructed in compliance with the notice and within a reasonable time therein specified said sidewalk will be constructed by the city or town and the cost and expense thereof assessed against the property abutting thereon and described in such notice. [L. '15, p. 423, § 3.]

§ 9158. [7718-4.] Notice—Time Allowed.

The notice provided for in the preceding section shall be deemed served if delivered to the owner or reputed owner of each lot, tract or parcel of land affected, or to the authorized agent of such owner, or if a copy thereof be left at the usual place of abode of such owner in such city or town with a person of suitable age and discretion residing therein, or in case such owner is a nonresident of such city or town and his place of residence is known a copy of such notice shall be mailed to such owner addressed to his last known place of residence, or in case the place of residence of such owner is unknown or if the owner of any lot, block or parcel of land affected is unknown then such notice shall be served by publication in two weekly issues of the official newspaper of such city or town or if there be no official newspaper then in any weekly newspaper published in said city or town. Such notice shall specify a reasonable time within which said sidewalk shall be constructed which in the case of publication of the notice shall be not less than sixty days from the date of the first publication of such notice. [L. '15, p. 424, § 4.]

§ 9159. [7718-5.] Construction by City—Assessment Against Property—Hearing.

In case the notice provided for in the preceding section shall not be complied with within the time therein specified the officer or department having charge of the care and superintendence of streets and public places in any such city or town, shall proceed to construct said sidewalk forthwith and shall report to the city council, city commission or other legislative body of such city or town at its next regular meeting or as soon thereafter as is practicable an assessment-roll showing each lot, block or parcel of land immediately abutting upon said sidewalk, the name of the owner thereof if known, and apportion the cost of said improvement to be assessed against each such lot, block or parcel of land and such legislative body shall thereupon set a date for hearing any protests against said proposed assessment-roll and shall cause a notice of the time and place of said hearing to be published for two successive

weeks in the official newspaper of said city or town or if there be no official newspaper then in any weekly newspaper published in such city or town, the date of said hearing to be not less than thirty days from the date of the first publication of said notice. [L. '15, p. 424, § 5.]

§ 9160. [7718-6.] Lien and Collection of Assessments.

The city council, city commission or other legislative body shall at the time of said hearing or at any adjournment thereof by ordinance assess the cost of constructing said sidewalk against the property immediately abutting thereon in accordance with the benefits thereto and such assessment shall become a lien upon the respective lots, blocks or parcels of land and shall be collected in the manner provided by law for the collection of local improvement assessments and shall bear interest at the rate of six per cent per annum from the date of the approval of said assessment thereon. [L. '15, p. 425, § 6.]

§ 9161. [7718-7.] "Abutting Property" Defined—"Sidewalk" Defined.

For the purposes of this act all property having a frontage on the side or margin of any street or other public place shall be deemed abutting property, and such property shall be chargeable, as provided in this act, with all costs of construction of any form of sidewalk improvement, between the margin of said street or other public place and the roadway lying in front and adjacent to said property, and the term sidewalk as used in this act shall be construed to mean and include any and all structures or forms of improvement included in the space between the street margin and the roadway known as the sidewalk area. [L. '15, p. 425, § 7.]

§ 9162. [7718-8.] Act Cumulative With Existing Laws.

This act shall not be construed as repealing or amending any law or act relating to the improvement of streets or public places by special assessments commonly known as local improvement laws, but shall be considered as additional legislation and auxiliary thereto and the city council, city commission or other legislative body of any city or town of the third or fourth class before exercising the authority herein granted may by ordinance provide for the application and enforcement of the provisions of this act within the limitations herein specified. [L. '15, p. 425, § 8.]

CHAPTER XIII.

FOURTH CLASS CITIES OR TOWNS.

§ 9163. [7719.] Rights, Powers and Privileges of Towns.

Every municipal corporation of the fourth class shall be entitled the town of — (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the town authorities, and may purchase, lease, receive, hold, and enjoy real and personal property and control and dispose of the same for the common benefit. [L. '90, p. 198, § 142; 1 H. C., § 661.]

See supra, § 5635 et seq., taxation and disposition of funds in.

See supra, § 8883 et seq., organization and incorporation of towns.

See supra, § 8894, boundaries, how altered.

See supra, § 8909, consolidation, how effected.

See supra, § 8932 et seq., classification of cities and towns.

See supra, § 8935, cities as bodies politic, etc., and restrictions upon area of towns.

See supra, § 8937 et seq., advancement of cities and towns.

See infra, § 9214, power of eminent domain.

Cited in 4 Wash. 419; 70 Wash. 596.

§ 9164. [7720.] Officers Enumerated.

The government of such town shall be vested in a mayor and council, to consist of five members, a clerk, a treasurer, a marshal who shall be ex officio tax and license collector, a police justice who may be one of the justices of the peace of the precinct in which said town is situated; and such subordinate officers as are hereinafter provided for. [L. '90, p. 198, § 143; 1 H. C., § 662; L. '03, p. 202, § 4.]

Duties of clerk as assessor abolished by § 11328 et seq., infra.

Cited in 14 Wash. 239; 56 Wash. 141; 64 Wash. 602.

§ 9165. [7721.] Election and Appointment of Officers—Terms.

The mayor, members of the council and treasurer shall be elected by the qualified electors of said town at the general municipal election to be held therein on the first Tuesday after the first Monday in December in each year. The treasurer shall hold office for the period of one year from and after the second Tuesday in January next succeeding the date of such election and until his successor is elected and qualified. The mayor and members of the council shall hold office for the period of two years from and after the second Tuesday in January next succeeding the day of such election and until their successors are elected and qualified: Provided, that the first council elected under the provisions of this act shall at their first meeting so classify themselves by lot as that three of their number shall go out of office at the expiration of one year and two at the expiration of two years. The mayor shall appoint a marshal, police justice and clerk. The city council may provide by ordinance for the appointment by the mayor of an attorney, poundmaster, superintendent of streets, a civil engineer and such police and other subordinate officers as in the judgment of the city council may be deemed necessary and may by ordinance fix their compensation. No appointment of any officer provided for herein shall be subject to confirmation by the city council. All officers appointed by the mayor as provided for in this act shall hold office during his pleasure. [L. '11, p. 111, § 1. Cf. L. '90, p. 198, § 144; 1 H. C., § 663; L. '03, p. 202, § 5.]

"This act": See note to § 8883.

Cited in 12 Wash. 557; 90 Wash. 502.

The council have the right, at their pleasure, to remove the marshal without notice or hearing: State ex rel. Tremblay v. McQuade, 12 Wash. 554, 41 Pac. 897.

An ordinance requiring the mayor to "immediately" sign all ordinances is void as an attempted amendment of this section: State ex rel. Bothel v. Woody, 90 Wash. 501, 156 Pac. 534.

§ 9166. [7722.] Bonds, Filing of, etc.—Oath of Office.

The clerk, treasurer, and marshal shall respectively, before entering upon the duties of their respective offices, execute a bond to such town in such penal sum as the council by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex officio incumbent; such bonds shall be approved by the council. All bonds, when approved, shall be filed with the clerk, except the bonds of the clerk, which shall be filed with the mayor. All the provisions of any law of this state relating to the official bonds of officers shall apply to such bonds, except as herein otherwise provided. Every officer of such town, before entering upon the duties of his office, shall take and file with the clerk the constitutional oath of office. [L. '90, p. 199, § 145; 1 H. C., § 664.]

Cited in 10 Wash. 150; 28 Wash. 686; 91 Wash. 409, 410, 412.

The requirement that a city officer take the oath is directory, and failure to do so does not work a forfeiture of the office: *Maxwell v. Smith*, 87 Wash. 629, 152 Pac. 530.

This section merely requires execution of a bond before entering upon duties of the office, not that the same be approved by the council before entering upon the duties: *Bartholomew v. Springdale*, 91 Wash. 408, 157 Pac. 1090, Ann. Cas. 1918B, 432.

§ 9167. [7723.] Vacancies, How Filled.

Any vacancy occurring in any of the offices provided for in this chapter shall be filled by appointment by the mayor; but if such office be elective, such appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of said unexpired term. In case a member of the council is absent from the town for three consecutive meetings, unless by permission of the council, his office shall by the council be declared vacant, and all vacancies in the council shall be filled by a majority vote of said council. [L. '90, p. 199, § 146; 1 H. C., § 665; L. '03, p. 202, § 6.]

See *infra*, § 9203, vacancy in office of mayor.

Cited in 10 Wash. 8.

Under this section, absence of a councilman for three consecutive meetings of the town council is the only ground for

his removal from office as the express mention thereof excludes other grounds: *State ex rel. Winsor v. Mayor & Council*, 10 Wash. 4, 38 Pac. 761.

§ 9168. [7724.] Compensation.

The mayor and members of the council shall receive no compensation whatever. The clerk, treasurer, marshal, and police justice shall severally receive, at stated times, a compensation, to be fixed by ordinance by the council, which compensation shall not be increased or diminished after their election or during their several terms of office. Nothing herein contained shall be construed to prevent the council from fixing such several amounts of compensation in the first instance, during the term of office of any such officer, or after his election. The compensation of all other officers shall be fixed from time to time by the council. [L. '90, p. 200, § 147; 1 H. C., § 666.]

Salaries of justices of the peace: See *supra*, §§ 7571, 7572.

§ 9169. [7725.] Elections—Qualifications of Voter.

All elections in such town shall be held in accordance with the general election laws of the state, so far as the same may be applicable; and no person shall be entitled to vote at such election, unless he shall be a qualified elector of the county, and shall have resided in such town for at least thirty days next preceding such election. The council shall give such notice of each election as may be prescribed by ordinance, shall appoint boards of election, and fix their compensation, and establish election precincts and polling places, and may change the same. [L. '90, p. 200, § 148; 1 H. C., § 667.]

Cited in 9 Wash. 311; 28 Wash. 672.

§ 9170. [7726.] Eligibility to Office.

No person shall be eligible to or hold office in such town, whether filled by election or appointment, unless he be a resident and elector therein. [L. '90, p. 200, § 149; 1 H. C., § 668.]

§ 9171. [7727.] General and Special Meetings.

The council shall meet on the second Tuesday in January succeeding the date of said general municipal election, shall take the oath of office, and shall hold regular meetings at least once in each month, at such times as they shall fix by ordinance. Special meetings may be called at any time by the mayor or by three councilmen, by written notice delivered to each member, at least three hours before the time specified for the proposed meeting. All meetings of the council shall be held within the corporate limits of the town, at such places as may be designated by ordinance, and shall be public. [L. '90, p. 200, § 150; 1 H. C., § 669.]

§ 9172. [7728.] Quorum, etc.

At any meeting of the council a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The mayor shall preside at all meetings of the council, and in case of his absence the council may appoint a president pro tempore; and in case of the absence of the clerk, the mayor or president pro tempore shall appoint one of the members of the council clerk pro tempore. [L. '90, p. 201, § 151; 1 H. C., § 670.]

§ 9173. [7729.] Election Returns—Rules—Ayes and Noes.

The council shall judge of the qualifications of its members and of all election returns, and determine contested elections of all town officers. They may establish rules for the conduct of their proceedings, and punish any member or other person for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and at the desire of any member shall cause the ayes and noes to be taken on any question and entered on the journal. [L. '90, p. 201, § 152; 1 H. C., § 671.]

Cited in 44 Wash. 544.

A common council, sitting as a board for the canvassing of election returns of members elected to their body, is bound by the face of the returns, and cannot go behind them and inspect the ballots in order to determine the result: *State ex rel. King v. Trimbell*, 12 Wash. 440, 41 Pac. 183.

The fact that a certificate of election has been issued to other than the per-

sons entitled thereto will not relieve the canvassing board from the duty of making a proper canvass and issuing the necessary certificates, and mandamus will lie to enforce this duty: *Id.*

The power to judge of the election and qualification of members of the common council is confined to the new council to which they are elected, and the old council has no other power than to issue certificates upon the face of the returns: *Id.*

§ 9174. [7730.] Limitations on Enacting Ordinances.

No ordinance and no resolution granting any franchise for any purpose shall be passed by the council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting. No resolution or order for the payment of money shall be passed at any other time than at a regular meeting; and no such ordinance, resolution, or order shall have any validity or effect unless passed by the votes of at least three councilmen. [L. '90, p. 201, § 153; 1 H. C., § 672.]

Cited in 53 Wash. 652; 64 Wash. 602.

Under this section an amendment of a franchise ordinance on the day of its passage by the substitution of the name of a railroad company, its successors and assigns, as grantee, in place of a mill company, its successors and assigns, is not such a change in the subject matter of

the ordinance as to render it a new or different ordinance, the purpose of the franchise being to permit the hauling of cars from the mill to the railroad, and being for the joint benefit of both companies: *State ex rel. Northern Pac. R. Co. v. Hughes*, 53 Wash. 651, 102 Pac. 758.

§ 9175. [7731.] General Powers.

The council of said town shall have power—

1. To pass ordinances not in conflict with the Constitution and laws of this state, or of the United States;

2. To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of and convey the same for the benefit of the town; Provided, that they shall not have power to sell or convey any portion of any waterfront;

3. To contract for supplying the town with water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for the use of such town or its inhabitants, or for irrigating purposes therein;

4. To establish, build and repair bridges; to establish, lay out, alter, widen, extend, keep open, improve, and repair streets, sidewalks, alleys, squares and other public highways and places within the town, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, plank, macadamize, gravel and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks and crosswalks therein, or on any part thereof; to cause to be planted, set out and cultivated trees therein, and generally to manage and control all such highways and places;

5. To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets along which sewers shall have been constructed to make proper connections therewith, and to use the same for proper purposes when such property is improved by

the erection thereon, of a building or buildings; and in case the owners of such improved property on such streets shall fail to make such connections within the time fixed by such council, they may cause such connections to be made, and to assess against the property in front of which such connections are made the costs and expenses thereof;

6. To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

7. To impose on, and collect from, every male inhabitant between the ages of twenty-one and fifty years, an annual street poll tax not to exceed four dollars, and no other road poll tax shall be collected within the limits of such town, and that said poll tax may be paid in labor on said streets at the rate of two dollars per day;

"Four dollars," repealed: See *infra*, foot of this section.

8. To impose and collect an annual license not exceeding two dollars on every dog allowed to run at large within the limits of the town, and to provide for the killing of all dogs found at large and not duly licensed;

9. To levy and collect annually a property tax. The levy for all purposes, for any one year, shall not exceed one dollar on each one hundred dollars of the assessed value of all real and personal property within such town;

10. To license, for purposes of regulation and revenue, all and every kind of business, including the sale of intoxicating liquors, authorized by law and transacted and carried on in such town; and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof; to fix the rate of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; to regulate, restrain, or prohibit the running at large of any or all domestic animals within the city limits, or any part or parts thereof, and to regulate the keeping of such animals within any part of the city; to establish, maintain and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed on, and collected from, the owners of any impounded stock;

11. To improve the rivers and streams flowing through such town or adjoining the same; to widen, straighten, and deepen the channels thereof, and to remove obstructions therefrom; to prevent the pollution of streams of water running through such town, and for this purpose shall have jurisdiction for two miles in either direction; to improve the waterfront of the town, and to construct and maintain embankments and other works to protect such town from overflow;

12. To erect and maintain buildings for municipal purposes;

13. To permit, under such restrictions as they may deem proper, the laying of railroad track and the running of cars drawn by horses, steam, electricity or other power thereon; and the laying of gas and water pipes in the public streets; and to construct and maintain, and to permit the construction and maintenance of telegraph, telephone and electric light lines therein;

14. To punish the keepers and inmates and lessors of houses of ill fame, and keepers and lessors of gambling houses and rooms and other places where gambling is carried on or permitted, gamblers and keepers of gambling tables;

15. To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed three hundred dollars, nor the term of imprisonment exceed three months;

16. To cause all persons imprisoned for violation of any ordinance to labor on the streets or other public property or works within the town;

17. To make all such ordinances, by-laws, rules, regulations and resolutions not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the town and its trade, commerce and manufactures, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter. [L. '90, p. 201, § 154; 1 H. C., § 673; L. '95, p. 50, § 1.]

See *infra*, § 9199, additional powers.

See *infra*, § 9214, power of eminent domain.

See *infra*, § 11328 et seq., assessment and collection of taxes in towns.

Subdivision 7, authorizing a poll tax of four dollars, is repealed by § 9210, *infra*, limiting the poll tax to two dollars.

Cited in 5 Wash. 307; 21 Wash. 553; 23 Wash. 778; 28 Wash. 725; 37 Wash. 512; 44 Wash. 479; 49 Wash. 270; 55 Wash. 200, 201; 64 Wash. 597; 70 Wash. 389; 71 Wash. 164; 75 Wash. 210; 83 Wash. 328; 90 Wash. 502.

Prior to the amendment of this section no specific provision existed for impounding animals in cities of the fourth class: See *Wilson v. Beyers*, 5 Wash. 303, 32 Pac. 90, 34 Am. St. Rep. 858.

The power to impound stock running at large by a city under an ordinance conforming to the legislative grant of such power, is a valid exercise of police power and not violative of any constitutional provision: *Id.*

Under this section, giving towns the power to establish and lay out alleys, the granting of a petition therefor, in the form of an order adopted by the city council with all the formalities required for the passage of an ordinance or resolution, is sufficient to authorize the institution of condemnation proceedings, as the order was in effect a resolution and the same need not be by ordinance: *State ex rel. Jones v. Superior Court*, 44 Wash. 476, 87 Pac. 521.

A town council has no authority to compromise and satisfy a valuable judgment in favor of the town by accepting from the judgment debtors a small sum, and will be enjoined from so doing at the suit of a taxpayer: *Farnsworth v. Wilbur*, 49 Wash. 416, 95 Pac. 642, 19 L. R. A. (N. S.) 320.

Under this section, a municipal corporation of the fourth class may prohibit the running at large of domestic animals, and an ordinance providing for the summary sale of impounded animals, under reasonable notice, without a judicial in-

quiry, is effective to transfer the title and does not authorize the taking of property without due process of law: *Shook v. Sexton*, 37 Wash. 509, 79 Pac. 1093.

A provision in such an ordinance imposing a fine against an owner for permitting animals to run at large to be exacted without a judicial investigation is unconstitutional: *Shook v. Sexton*, 37 Wash. 509, 79 Pac. 1093.

This section, subdivision 13, authorizes a town to grant a franchise to lay railway tracks lengthwise in a street: *State ex rel. Sylvester v. Superior Court*, 64 Wash. 594, 117 Pac. 487.

A town upon its incorporation does not acquire any such vested right to the control of its streets in virtue of its authority over streets, granted by this section, as would prevent the legislature from legalizing prior franchises: *Spring Water Co. v. Monroe*, 55 Wash. 195, 104 Pac. 202.

A town council has power, under the general welfare clause, as well as under this section, subdivision 5, to issue warrants for the digging of a ditch to carry off surface water, although the ditch was partly outside the town limits: *Town of Woolley, In re*, 75 Wash. 206, 134 Pac. 825.

The general power to lay out and maintain highways and to improve rivers adjoining a town is confined to the city limits, and does not confer authority to maintain a ferry outside the limits on a highway leading to town; nor is the operation of a ferry for commercial purposes a governmental or municipal function: *Town of Woolley, In re*, 75 Wash. 206, 134 Pac. 825.

§ 9176. [7732.] To Establish Fire Limits and Acquire Parks.

Cities of the fourth class are hereby given the power to establish fire limits with proper regulations; to acquire by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same; Provided, however, that no sum shall be appropriated for that purpose until the same is authorized by a vote of two-thirds of the qualified voters residing in such city, at the annual municipal election, or at a special election held for that purpose, which election shall be held as other special elections. [L. '99, p. 168, § 1.]

§ 9177. [7733.] To Designate an Official Newspaper.

Any town of the fourth class in the state of Washington may select or designate any daily or weekly newspaper published or of general circulation in such town as the official paper of said town, and all notices published in said paper for the period and in the manner provided by law or the ordinances of said town shall be due and legal notice. [L. '03, p. 227, § 1.]

§ 9178. [7734.*] Ordinances, Enacting Clause, Form, etc.

The enacting clause of all ordinances shall be as follows: "Be it ordained by the council of the town of —." Every ordinance shall be signed by the mayor, attested by the clerk, and published at least once in a newspaper published in such town, or in case no newspaper is published in such town, be printed and posted in at least three public places therein. [L. '17, p. 342, § 1; L. '90, p. 204, § 155; 1 H. C., § 674.]

See supra, § 1260½, ordinances as evidence.

Cited in 14 Wash. 240; 36 Wash. 609; 53 Wash. 652.

The charter of cities of the fourth class gives the mayor no veto or discretionary power, with reference to signing ordinances, and under this section man-

damus lies to compel the mayor to sign an ordinance duly passed by the council, since his duties depend entirely upon the charter provisions: State ex rel. Prosser Falls Land & Irr. Co. v. Taylor, 36 Wash. 607, 79 Pac. 286.

§ 9179. [7735.] Demands, How Audited.

All demands against such town shall be presented to and audited by the council in accordance with such regulations as they may by ordinance prescribe, and upon the allowance of any such demand the mayor shall draw a warrant upon the treasurer for the same, which warrant shall be countersigned by the clerk, and shall specify for what purpose the same is drawn. [L. '90, p. 204, § 156; 1 H. C., § 675.]

See supra, § 4116, and notes, order of payment of town warrants.

See infra, § 9481, accident claims against.

Cited in 9 Wash. 145; 12 Wash. 165.

In the absence of statutory provisions directing the order of payment of city warrants, it is the duty of the treasurer to pay warrants drawn on any particular fund in the order either of their date or of the time of their presentation to him for payment: La France Fire Engine Co. v. Davis, 9 Wash. 600, 38 Pac. 154, compare Abernethy v. Medical Lake, 9 Wash. 112, 37 Pac. 306.

The fact that under a verbal agreement

between a town and an individual the latter has advanced funds for the payment of the current expenses and public improvement of the town, for which its warrants have been issued to him and an ordinance passed by the town council directing the application of funds derived from taxation to the payment of such warrants, is sufficient to show a presentment and allowance of the claims, as required under this section: Cloud v. Lawrence, 12 Wash. 163, 40 Pac. 741.

An action cannot be maintained upon a warrant issued by a municipal corporation evidencing its indebtedness to the holder, but the remedy of the holder, in case of the refusal of the treasurer of the corporation to pay the warrant in its order, is to proceed by mandamus, and, in such proceeding, questions affecting the legality of the warrant can be tried: *Cloud v. Sumas*, 9 Wash. 399, 37 Pac. 305.

A judgment against a city is payable only through the medium of the warrant on the city treasury; but if the council refuse to allow the claim when presented, there is no way to compel issuance of warrant except after judgment obtained: *La France Fire Engine Co. v. Mt. Vernon*, 9 Wash. 142, 37 Pac. 287, 38 Pac. 80, 43 Am. St. Rep. 827.

§ 9180. [7735 $\frac{1}{2}$.] Violation of Ordinances, Prosecution and Punishment for.

The violation of any ordinance of such town shall be deemed a misdemeanor, and may be prosecuted by the authorities of such town in the name of the people of the state of Washington, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the jail for such town; or if the council by ordinance shall so prescribe, in the county jail of the county in which such town may be situated, in which case the expense of such imprisonment shall be a charge in favor of such county and against such town: Provided, before such persons can be imprisoned in the county jail the consent of the county commissioners shall be first obtained. [L. '90, p. 205, § 159; 1 H. C., § 676.]

Cited in 14 Wash. 240; 60 Wash. 240.

§ 9181. [7736.] Nuisances.

Every act or thing done or being within the limits of such town, which is or may be declared by law or by any ordinance of such town to be a nuisance, shall be and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto. [L. '90, p. 205, § 160; 1 H. C., § 677.]

§ 9182. [7738.] Condemnation Authorized, When.

Whenever it shall become necessary for a town to take or damage private property for the purpose of establishing, laying out, extending, and widening streets and other public highways and places within the town, or for the purpose of rights of way for drains, sewers, and aqueducts, and for the purpose of widening, straightening, or diverting the channels of streams and the improvement of waterfronts, and the council cannot agree with the owner thereof as to the price to be paid, the council may direct proceedings to be taken under the general laws of the state to procure the same. [L. '90, p. 207, § 162; 1 H. C., § 679.]

See, also, § 9214, *infra*, and notes.

Cited in 44 Wash. 479.

Upon a condemnation proceeding by a town to open an alley through a block, it is not a condition precedent that the town should attempt to agree with the owners as to the price to be paid for the

land taken: *State ex rel. Jones v. Superior Court*, 44 Wash. 476, 87 Pac. 521.

In such a case, evidence to show want of necessity to the effect that the city had used a portion of adjacent land for an alley is properly excluded; since an absolute necessity need not be shown: *Id.*

§ 9183. [7739.] Taxes, Levy of, etc.

The council shall have power, and it shall be their duty, to provide by ordinance a system for the assessment, levy, and collection of all town taxes, not inconsistent with the provisions of this chapter, which system shall conform, as nearly as the circumstances of the case may permit, to the provisions of the laws of this state governing cities of the second class in reference to the assessment, levy, and collection of municipal taxes, except as to the officers by whom such duties are to be performed. All taxes assessed, together with any percentage imposed for delinquency and the costs of collection, shall constitute liens on the property assessed from and after the first day of November in each year, which liens may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinances or by action in any court of competent jurisdiction to foreclose such liens: Provided, that for the year 1890 there shall, within sixty days after the completion of incorporation proceedings under this act, be assessed and levied upon the taxable property of such town such an amount, not exceeding the limit allowed by law, as may be necessary to meet the current expenses of said town for the fraction of the year ensuing, to the date of the regular assessment and levy of taxes next following as may be provided by law or ordinance, and the lien of such taxes shall attach upon the day when the proceedings for the incorporation of such town are completed, and the same may be enforced as in other cases in this act provided: Provided, that any property sold for such taxes shall be subject to redemption within the time and in the manner provided, or that may hereafter be provided by law for the redemption of property sold for state or county taxes. All deeds made upon any sale of property for taxes or special assessments, under the provisions of this chapter, shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for nonpayment of state or county taxes. [L. '90, p. 207, § 163; 1 H. C., § 680.]

This "chapter" and "act": See note to § 8883.

This section is superseded by § 11328 et seq., *infra*, in so far as assessment and collection of taxes in cities of the fourth class are concerned.

See *supra*, § 5635, tax levies and funds.

§ 9184. [7740.] Taxes for Bonded or Other Indebtedness.

Nothing in this chapter contained shall be construed to prevent any town having a bonded or other indebtedness, contracted under laws heretofore passed, from levying and collecting such taxes for the payment of such indebtedness and the interest thereon, as are provided for in such laws, in addition to the taxes and limit herein authorized to be levied and collected: Provided, that if such indebtedness shall exceed the limit in this chapter prescribed, it shall not require a vote of the people to authorize the payment of such indebtedness by the town council: And provided further, that any ordinance duly passed by the town council of any town prior to the passage of this act authorizing the payment of said indebtedness, shall be and the same is hereby declared valid (and legal and binding): Provided further, all moneys received from licenses, street

poll tax, and for fines, penalties, and forfeitures, shall be paid into the general fund. [L. '90, p. 208, § 165; L. '91, p. 279, § 1; 1 H. C., § 682.]

"This chapter" and "this act": See note to § 8883.

§ 9185. [7741.] Public Work to be Done by Contract—Notice, etc.

In the erection, improvement and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays or waterfronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditure required for the same exceeds the sum of one hundred dollars the same shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulations as may be prescribed by ordinance: Provided, that the council may reject all bids presented and readvertise in their discretion or if in the judgment of the council such work can be performed or supplies or materials furnished by the city independent of contract cheaper than under the lowest bid submitted, it may cause such work to be performed or supplies or materials to be furnished independent of contract. [L. '90, p. 209, § 166; 1 H. C., § 683; L. '03, p. 35, § 1.]

Cited in 23 Wash. 585.

Under this section, a contract for the purchase of a system and pipe-lines contracted by the state without submitting

it to a vote, is ultra vires and void: State v. Pullman, 23 Wash. 583, 63 Pac. 265, 83 Am. St. Rep. 836.

§ 9186. [7742.] Powers and Duties of Mayor.

The mayor shall preside over all meetings of the council at which he is present. In his absence, a mayor pro tempore may be chosen. The mayor, and in his absence the mayor pro tempore, shall sign all warrants drawn on the treasurer, and shall sign all written contracts entered into by said town as such mayor or mayor pro tempore. The authority and power of the mayor pro tempore shall continue only during the day on which he is chosen. The mayor and mayor pro tempore shall have power to administer oaths and affirmations, and take affidavits, and testify [certify] the same under their hands. The mayor or mayor pro tempore shall sign all conveyances made by said town, and all instruments which shall require the seal of the town. The mayor is authorized to acknowledge the execution of all instruments executed by said town that require to be acknowledged. [L. '90, p. 209, § 167; 1 H. C., § 684.]

Cited in 90 Wash. 502.

An ordinance requiring the mayor to "immediately" sign all ordinances is void

as an attempted amendment of this section: State ex rel. Bothel v. Woody, 90 Wash. 501, 156 Pac. 534.

§ 9187. [7743.*] Duties of Treasurer.

It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the clerk. He shall pay out said money on warrants signed by the mayor and countersigned by the clerk, and not otherwise. He shall make monthly settlements with the clerk, and shall receive such compensation as the

council by ordinance shall determine. [L. '21, p. 91, § 1; L. '90, p. 209, § 168; 1 H. C., § 685.]

See *supra*, § 5571, city depositaries, duty of treasurer.

Cited in 9 Wash. 145.

§ 9188. [7744.] Duties of Clerk.

It shall be the duty of the clerk to keep a full, true record of all the proceedings of the council and of the board of equalization. The proceedings of the council shall be kept in a book marked "Records of the Council." He shall keep a book which shall be marked "Town Accounts," in which shall be entered as a credit all moneys received by the town for licenses, the amount of any tax when levied, and all other moneys when received, and in which shall be entered upon the debtor side all commissions deducted and all warrants drawn on the treasury. He shall also keep a book marked "Marshal's Account," in which he shall charge the marshal with all the tax lists delivered to him, and all licenses delivered to him. He shall credit the marshal with the delinquent list returned by him and with his commission for collecting. He shall also keep a book marked "Treasurer's Account," in which he shall keep a full account of the transactions of the town with the treasurer. He shall also keep a book marked "Licenses," in which he shall enter all licenses issued by him, the date thereof, to whom issued, for what, the time when they expire, and the amount paid. He shall keep a book marked "Ordinances," into which he shall copy all town ordinances, with his certificate annexed to said copy, stating that the foregoing ordinance is a true and correct copy of an ordinance of the town, and giving the number of the title of said ordinance, and stating that the same has been published or posted according to law. Said record copy, with said certificate, shall be prima facie evidence of the contents of the ordinance, and of the passage and publication of the same, and shall be admissible as such evidence in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. Each of the foregoing books, except the records of the council and the board of equalization, shall have a general index, sufficiently comprehensive to enable a person readily to ascertain matters contained therein. The clerk shall also keep a book marked "Demands and Warrants," in which he shall note every demand against the town, and file the same. He shall state therein, under the note of the demands, the final disposition made of the same, and if the same is allowed, and the warrant drawn, he shall also state the number of the warrant, with sufficient dates. This book shall contain an index, in which reference shall be made to each demand. Upon the completion of the assessment-roll of any of the taxes of the town and the levying of the tax thereon, the clerk shall apportion the taxes upon such assessment-roll and make out and deliver to the marshal a tax list, in the usual form, taking his receipt therefor. He may appoint a deputy, for whose acts he and his bondsmen shall be responsible; and he and his deputy shall have power to administer oaths or affirmations, to take affidavits and depositions, to be used in any court or proceeding

in this state, and to certify the same. He and his deputy shall take all necessary affidavits to demands against the town, and certify the same without charge. He shall be the custodian of the seal of the town. He shall make a quarterly statement in writing, showing the receipts and expenditures of the town for the preceding quarter, and the amount remaining in the treasury. He shall, at the end of every fiscal year, make a full and detailed statement of the receipts and expenditures of the preceding year, and a full statement of the financial condition of the affairs of the town, which shall be published. He shall perform such other services as this act and the ordinances of the council shall require. [L. '90, p. 210, § 170; 1 H. C., § 687.]

Portions of this section omitted on authority of § 11328 et seq., *infra*.

"This act": See note, § 8883.

Cited in 9 Wash. 145.

§ 9189. [7745.] Duties of Attorney—Compensation.

It shall be the duty of the attorney to advise the town authorities and officers in all legal matters pertaining to the business of said town. [L. '90, p. 212, § 171; 1 H. C., § 688.]

Portions of this section omitted on authority of § 11328 et seq., *infra*.

§ 9190. [7746.] Marshal, Powers and Duties of.

The department of police of said town shall be under the direction and control of the marshal, subject to the direction of the council and for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities, in the lawful exercise of their functions, he shall have the powers that are now and may hereafter be conferred upon sheriffs by the laws of the state, and shall in all respects be entitled to the same protection; and his lawful orders shall be promptly executed by deputies, police officers, and watchmen in said town, and every citizen shall also lend him aid when required for the arrest of offenders and maintenance of public order. He shall and is hereby authorized to execute and return all process issued and directed to him by any legal authority. It shall be his duty to prosecute before the police justice all breaches or violations of, or noncompliance with, any ordinance which shall come to his knowledge. . . . He shall receive from the clerk all licenses, and collect the same. He shall have charge of the prison and prisoners, and of any chain-gang which may be established by the council. He shall, for service of any process, receive the same fees as constables. He may appoint, subject to the approval of the council, one or more deputies, for whose acts he and his bondsmen shall be responsible, whose compensation shall be fixed by the council. He may also with the concurrence of the mayor, when the same be by them deemed necessary for the preservation of public order, appoint additional policemen, who shall discharge the duties assigned them for one day only. He shall perform such other services as this act and the ordinances of the council shall require, and shall receive such compensation as shall be fixed by ordinance. [L. '90, p. 213, § 172; 1 H. C., § 689.]

Portions of this section omitted on authority of § 11328 et seq., *infra*.

"This act": See note to § 8883.

§ 9191. [7747.] Additional Duties—Compensation.

The council shall, by ordinances not inconsistent with the provisions of this chapter, prescribe the additional duties of all officers and their compensation. [L. '90, p, 214, § 173; 1 H. C., § 690.]

§ 9192. [7748.*] Police Justice—Jurisdiction—Appeal.

There shall be appointed by the mayor a police justice from the justices of the peace duly elected or appointed under the laws of the state of Washington for said town, which appointment shall become effective when confirmed by the council. Such police justice so appointed, in addition to his powers as a justice of the peace, shall have exclusive jurisdiction over all offenses defined by any ordinance of the town, and all other actions brought to enforce or recover any license, penalty or forfeiture declared or given by any such ordinance, and full power to forfeit bail bonds and issue execution thereon and full power to forfeit cash bail, and full power to hear and determine all causes, civil or criminal, arising under such ordinance, and pronounce judgment in accordance therewith: Provided, that for the violation of a criminal ordinance no greater punishment shall be imposed than a fine of one hundred dollars or imprisonment not to exceed thirty days or by both such fine and imprisonment. In the trial of actions brought for the violation of any town ordinance no jury shall be allowed, and no change of venue shall be allowed from such police judge in actions brought for violation of town ordinances. All criminal and civil proceedings before such police justice and judgment rendered by him shall be subject to review in the superior court of the proper county by writ of review or appeal. In actions brought before such police justice to enforce or recover any license, penalty or forfeiture declared or given by any ordinance and in all other civil actions the manner of commencing the same, the manner of obtaining service upon the defendant, the procedure during the pendency of the action and for the enforcement of the judgment obtained, if any, and the procedure in appeal therefrom, together with the time limitation upon such appeal shall be as provided in the case of civil actions before justices of the peace. All officers so appointed by the mayor and confirmed by the council are subject to removal by the town council at any time for cause deemed sufficient. Said police justice shall, before entering upon the duties of his office, give such additional bond to the city for the faithful performance of his duties as the city council may by ordinance direct, and shall receive such salary in addition to his salary as justice of the peace as the council may by ordinance direct. [L. '21, p. 205, § 1; L. '90, p. 214, § 174; 1 H. C., § 691.]

"This act": See note to § 8883.

Cited in 12 Wash. 558; 14 Wash. 239; 60 Wash. 240.

Jurisdiction: See notes to §§ 44, 46, 9143.

§ 9193. [7749.] Disposition of Moneys Collected.

Every officer collecting or receiving any moneys belonging to or for the use of such town shall settle for the same with the clerk on the first Monday in each month, and immediately pay the same into the treasury

on the order of the clerk, for the benefit of the funds to which such moneys respectively belong. [L. '90, p. 214, § 175; 1 H. C., § 692.]

§ 9194. [7750.] Officers not to be Interested in Contracts—Penalty.

No officer of such town shall be interested, directly or indirectly, in any contract with such town, or with any of the officers thereof, in their official capacity, nor in doing any work nor furnishing any supplies for the use of such town, or its officers in their official capacity; and any claim for compensation for work done or supplies or materials furnished in which any such officer is interested shall be void, and if audited and allowed, shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such. [L. '90, p. 215, § 176; 1 H. C., § 693.]

Cited in 76 Wash. 208, 211.

A contract for a public improvement is not invalidated by the interest of city officials, under this section, where they had no interest in the contract when it was let, and it merely appears that, after changes in the specifications, the con-

tractor purchased material from corporations in which they were interested, and paid for the same in the usual course of business, without any agreement to pay from the proceeds of the contract: *O'Neill v. Town of Auburn*, 76 Wash. 207, 135 Pac. 1000, 50 L. R. A. (N. S.) 1140.

§ 9195. [7751.] Defining Boundaries—Proceedings—Petition.

Whenever a petition shall be presented to the council of any incorporated town or city of the fourth class in this state, signed by not less than five electors of such town or city, setting forth that in the belief of said petitioners, the boundaries of said town or city of the fourth class are indefinite and uncertain and that on account of such indefiniteness and uncertainty the legality of the taxes levied within such town or city are in danger of being affected, and setting forth the particular causes or reasons of such alleged indefiniteness or uncertainty, it shall be the duty of the town or city council of such town or city, to cause said petition to be filed and recorded by the clerk, and to cause a copy of the same to be made and certified by the clerk and the corporate seal of such town or city to be attached to said certificate, and the mayor of such town or city shall forthwith present said certified copy of said petition to the board of county commissioners of the county wherein said town or city is situate, with a written request to be signed by him as such mayor that the said board of county commissioners proceed to examine the boundaries of such town or city, and make the same definite and certain. [L. '99, p. 126, § 1.]

§ 9196. [7752.] County Commissioners to Examine Boundaries—Survey.

It shall be and is hereby made the duty of said board of county commissioners upon receipt of said certified copy of said petition, and the request aforesaid, to cause the same to be filed in the office of the auditor of said county, and to forthwith proceed to examine the boundaries of such town or city, and to make the same definite and certain. For this purpose they may employ a competent surveyor, and shall commence at some recognized and undisputed point on the boundary line of such town or city, if such there be and in case there be no such recognized and

undisputed point, they shall establish a starting point from the best data at their command and from such starting point they shall run a boundary line by courses and distances around such town or city, in one tract or body. [L. '99, p. 127, § 2.]

§ 9197. [7753.] Report—Filing With County Auditor.

It shall be and is hereby made the duty of the said board of county commissioners, without unnecessary delay, to make and file a report of their doings in the premises in the office of the auditor of said county, who shall transmit a certified copy thereof under the seal of the county, to the clerk of said town or city, and the said clerk shall record the same in the records of said town or city, and keep the said copy on file in his office. Said report shall contain the description of the boundary of said town or city, as fixed by said board, written in plain words and figures and the boundaries so made and fixed shall be the boundaries of such town or city, and all the territory included within the boundary lines so established shall be included in the said town or city, and be a part thereof. [L. '99, p. 127, § 3.]

§ 9198. [7754.] Expenses.

The expense of such proceedings shall be paid by the town or city at whose request the same shall be incurred. The said commissioners shall each receive as compensation, an amount not exceeding the amount allowed by law for their usual services as commissioners, and, any surveyor or other assistants employed by them, a reasonable compensation to be fixed and certified by said commissioners. [L. '99, p. 128, § 4.]

CHAPTER XIV.

ADDITIONAL POWERS, BICYCLES, POLL TAX, LIBRARY LEVIES—STREET RAILWAY EXTENSION.

§ 9199. [7755.] May Require Bond from Persons Obtaining Franchises.

City councils in the cities of the second, third and fourth class, shall have the right, and they are hereby authorized to require a bond in a reasonable amount from persons or corporations obtaining franchises from such cities, conditioned for the faithful performance of the conditions and terms of the franchise, and providing a recovery on such bond in case of a failure of such person or corporation, failing to perform the conditions and terms of such franchise. [L. '07, p. 564, § 1.]

Cited in 78 Wash. 50.

This section expressly authorizes towns to require a bond to secure the performance of conditions and terms of franchises to furnish the town with electric lights: *Castle Rock v. Furth*, 78 Wash. 47, 138 Pac. 317.

The title to this act giving cities and towns of the second, third and fourth class certain "additional powers" is not invalid as embracing more than one subject: *Castle Rock v. Furth*, 78 Wash. 47, 138 Pac. 317.

§ 9200. [7756.] Appointment of Park Commissioners—Powers of Board.

City councils of cities of the second, third and fourth class, are authorized to provide by ordinances, for a board of park commissioners, not to exceed three in number, and to be appointed by the mayor, and

to serve during his pleasure, provided that such board shall serve without compensation. Such board of park commissioners shall have control and supervision of all parks belonging to such city and shall have power to prescribe rules and regulations for the government and management thereof, and which rules and regulations shall be enforced by the police department of the city. [L. '07, p. 564, § 2.]

§ 9201. [7757.] Tax Levy for Park Purposes.

City councils of the cities of the second, third and fourth class are hereby authorized and empowered to levy a tax not to exceed one mill on all taxable property for the purpose of maintaining and improving any park or parks, or the purchase thereof for any such town or city. That the proceeds of such levy shall be paid into a special fund, to be known as the Park Fund, and the disbursement of such fund shall be provided for by ordinance. [L. '07, p. 564, § 3.]

§ 9202. [7758.] Annexation of Territory for Municipal Purposes.

City councils of the cities of the second, third and fourth class, shall and they are hereby authorized and empowered to annex new territory for park, cemetery or other municipal purpose, which may be outside of the city limits of such city, whether contiguous or noncontiguous thereto by ordinance enacted by a majority vote of such council. [L. '07, p. 565, § 4.]

§ 9203. [7759.] Vacancy in Office of Mayor—How Filled.

In case of a vacancy occurring in the office of the mayor in a city of the second, third or fourth class, the city council be and it is hereby empowered and authorized, and it shall be its duty to elect a mayor to serve the unexpired term. [L. '07, p. 565, § 5.]

§ 9204. [7760.] May License Bicycles and Construct Paths.

All cities of the first, second, third and fourth classes in this state are hereby empowered and authorized to regulate and license the riding of bicycles and other similar vehicles upon or along the streets, alleys, highways or other public grounds within their respective corporate limits and to construct and maintain bicycle paths or roadways within the corporate limits of such cities, respectively, or outside of any [and] beyond such corporate limits leading to or from such cities, respectively. [L. '99, p. 41, § 1.]

§ 9205. [7761.] Riding Unlicensed Bicycles may be Prohibited.

It shall be unlawful for any person to ride upon a bicycle or other similar vehicle on the sidewalks of any city of the first, second, third or fourth classes within the limits within which the city council of such city may by ordinance prohibit the riding of the same on sidewalks, and such cities are hereby empowered by ordinance to provide for reasonable fines and penalties to be imposed for the violation of such ordinances. [L. '99, p. 41, § 2.]

§ 9206. [7762.] Unlawful to Use Bicycle Paths for Other Purposes.

It shall be unlawful for any person to lead, drive, ride or propel any team, wagon, animal or vehicle other than those hereinbefore named, upon and along any bicycle path heretofore constructed or that may hereafter be constructed, within or without the corporate limits of any city, excepting at suitable crossings to be provided in the construction of such paths. Any person violating the provisions of this section shall be guilty of a misdemeanor. [L. '99, p. 42, § 3.]

§ 9207. [7763.] License Fees.

Cities of the first, second, third and fourth class are hereby authorized and empowered by ordinance to establish and collect reasonable license fees from all persons riding a bicycle or other similar vehicle within their respective corporate limits, and to enforce the payment thereof by reasonable fines and penalties. [L. '99, p. 42, § 4.]

§ 9208. [7764.] Regulation shall be by Ordinance.

The license fee to be paid and the rules regulating the riding of bicycles or other similar vehicles within any city of said classes shall be fixed by ordinance, and the rules regulating the use of such bicycle paths or roadways constructed or maintained by them within the corporate limits of such cities under the authority of this act, and the fines and penalties for the violation of such rules shall be fixed by ordinance. [L. '99, p. 42, § 5.]

"This act" refers to §§ 9204—9209.

§ 9209. [7765.] Bicycle Road Fund—How Maintained and Applied.

The city council of each city shall by ordinance provide that the whole amount or any amount not less than seventy-five (75) per centum of all license fees, fines, penalties or other moneys collected under the power hereby conferred, shall be paid into and placed to the credit of a special fund to be known as the "Bicycle road fund," and the moneys in said fund shall not be transferred to any other fund in such cities, and shall be paid out for the sole purpose of building and maintaining bicycle paths and roadways authorized to be constructed and maintained by this act, or for special policemen, bicycle tags, stationery and other expenses growing out of the regulating and licensing of the riding of bicycles and other vehicles and the construction and maintenance and regulation of the use of bicycle paths and roadways. [L. '99, p. 42, § 6.]

§ 9210. [7766.] Poll Tax in Cities of Third and Fourth Class.

The city council of cities of the third and fourth class in this state shall have power to impose on and collect from every male inhabitant of such city over the age of twenty-one years an annual street poll tax not exceeding two dollars, and no other road poll tax shall be collected within the limits of such city. [L. '05, p. 140, § 1.]

This section repeals § 9175, subd. 7, authorizing a poll tax of four dollars in towns.

Cited in 92 Wash. 362.

This section does not, by reason of the exemption of females and minors, violate

Constitution, Article VII, § 9, requiring uniformity in city taxes in respect to persons and property; since the constitu-

tional requirement as to uniformity does not forbid a proper classification of the subjects of the tax: *Tekoa v. Reilly*, 47 Wash. 202, 91 Pac. 769, 13 L. R. A. (N.S.) 901. [State v. Ide, 35 Wash. 576, 77 Pac. 961, 102 Am. St. Rep. 914, 1 Ann. Cas. 634, 67 L. R. A. 280, overruled.] See, also, *Thurston County v. Tenino Stone Quarries*, 44 Wash. 351, 87 Pac. 634.

An ordinance levying a poll tax upon all male inhabitants over twenty-one upon

the authority of this section, although valid when passed, is repealed or rendered invalid as to males over fifty years of age, by 3 Rem. & Bal. Code, section 7685, subdivision 7, passed in 1913, authorizing cities of the third class to levy a street poll tax upon male inhabitants between the ages of twenty-one and fifty years, and no other: *State ex rel. McMannis v. Superior Court*, 92 Wash. 360, 159 Pac. 383.

§ 9211. Library Tax Levies in Third and Fourth Class Cities.

The city council of cities of the third or fourth class are hereby authorized, without vote of the people, to annually levy a property tax, not to exceed two mills, for public library purposes. [L. '19, p. 511, § 1.]

§ 9212. Submission to Voters.

The city council of cities of the third or fourth class are hereby authorized to hold a special election annually, upon ten days' posted notices, at which shall be submitted to the voters of such city the question whether the said council shall be authorized to levy a property tax of three mills for public library purposes, and if a majority of the voters voting at such election shall decide in the affirmative, then the said council shall be authorized to levy a property tax, of not to exceed three mills, for public library purposes for the year in which said election is held. [L. '19, p. 511, § 2.]

§ 9213. Street Railway Extensions.

Any municipal corporation in the state of Washington which now owns or operates, or which may hereafter own or operate, any street railway within the corporate limits thereof, may acquire, construct and extend, own and operate such street railway to any point or points not to exceed eight miles outside of its said corporate limits, measured along the line of such railway: And provided, that this act shall not be construed to prevent the operation of any municipally owned street railway which now extends beyond the city limits of any city. [L. '19, p. 389, § 1; L. '17, p. 217, § 1.]

CHAPTER XV.

EMINENT DOMAIN BY CITIES.

§ 9214. [7767.] Proceedings Under Power of Eminent Domain.

Municipal corporations, except cities of the first class, are hereby empowered and authorized to acquire, condemn, take or damage private property for public corporate uses, and for such purposes may proceed to acquire, take, or damage the same, in the manner provided by sections 921—936 of this code. [L. '93, p. 135, § 1.]

This section may be superseded except as to towns. See *infra*, this chapter.

See *supra*, § 921 et seq., mode of procedure in condemnation.

See *supra*, notes to § 8966.

See *supra*, § 9182, power of eminent domain in cities of the fourth class.

See *infra*, §§ 9280, 9281, grant of power of eminent domain to cities of neighboring states for securing and protecting their water supplies in this state.

See *infra*, § 9249, "assessment," appearing in this chapter to include "installments."

See *infra*, § 9469, this chapter made applicable to the filling of low lands.

Cited in 44 Wash. 480; 83 Wash. 282; 84 Wash. 90, 409.

§ 9215. [7768.] What Cities may Condemn—Purposes.

Every city and town and each unclassified city and town within the state of Washington, is hereby authorized and empowered to condemn land and property, including state, county and school lands and property for streets, avenues, alleys, highways, bridges, approaches, culverts, drains, ditches, public squares, public markets, city and town halls, jails and other public buildings, and for the opening and widening, widening and extending, altering and straightening of any street, avenue, alley or highway, and to damage any land or other property for any such purpose or for the purpose of making changes in the grade of any street, avenue, alley or highway, or for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, avenue, alley or highway now ordered to be, or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, or for the purpose of draining swamps, marshes, tide lands, tide flats or ponds, or filling the same, within the limits of such city, and to condemn land or property, or to damage the same, either within or without the limits of such city for public parks, drives and boulevards, hospitals, pesthouses, drains and sewers, garbage crematories and destructors and dumping grounds for the destruction, deposit or burial of dead animals, manure, dung, rubbish, and other offal, and for aqueducts, reservoirs, pumping stations and other structures for conveying into and through such city a supply of fresh water, and for the purpose of protecting such supply of water from pollution, and to condemn land and other property and damage the same for such and for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this act. [L. '15, p. 446, § 1. Cf. L. '07, p. 316, § 1; L. '93, p. 189, § 1; L. '05, p. 84, § 1.]

As to title to this act, see notes to §§ 9272, 9277.

Cited in 34 Wash. 352; 35 Wash. 306; 36 Wash. 116; 38 Wash. 27, 518, 522, 523; 40 Wash. 152; 43 Wash. 633; 44 Wash. 63, 64, 65, 67, 134; 47 Wash. 247; 49 Wash. 112; 50 Wash. 137; 53 Wash. 218; 57 Wash. 292, 316; 58 Wash. 595; 59 Wash. 42; 62 Wash. 433, 434; 63 Wash. 575; 66 Wash. 334; 69 Wash. 539; 73 Wash. 234, 694; 80 Wash. 228—233; 84 Wash. 408, 409; 86 Wash. 8, 626; 94 Wash. 428, 431; 98 Wash. 373.

Nature and Extent of Power in General: See Remington's Digest, Em. Dom., §§ 1—47, and cases cited.

See, also, notes to §§ 921 to 931.

This section authorizing towns to condemn lands has not been superseded by subsequent statutes: *State ex rel. Jones v. Superior Court*, 44 Wash. 476, 87 Pac. 521.

Cities and towns of any class are expressly authorized to condemn lands for

the purpose of supplying a water system, by section 9488, *infra*, which supersedes this section, limiting such power to cities and towns having over one thousand five hundred inhabitants (prior to the amendment of 1915): *Redmond v. Perrigo*, 84 Wash. 407, 146 Pac. 838.

Where it is necessary to exercise the power of eminent domain in order to make a municipal improvement, the entire proceedings need not be completed under this act, which was designed solely to ascertain and assess the compensation; and the city may order the work done and levy the assessment under its charter provisions and ordinances, and not in the condemnation proceedings: *Brown v. Seattle*, 57 Wash. 314, 106 Pac. 1113.

Under the express provisions of this act, a city is empowered to condemn land for garbage incinerators and dumping grounds: *Hoquiam v. Lenhart*, 86 Wash. 625, 150 Pac. 1196.

Under this section the judgments are final and can be corrected only on appeal or by statutory proceedings on motion or petition within one year of their entry; hence property owners who failed to appeal or to institute proceedings within one year to vacate or modify the judgment cannot subsequently by action in equity obtain the same relief accorded to property owners who had appealed and thereby secured a reduction of their assessments: *Strelau v. Seattle*, 85 Wash. 255, 147 Pac. 1144.

This section and section 9237, *infra*, are not unconstitutional in authorizing assessments by commissioners, subject to review by the courts, without any jury

trial: *Jackson Street, In re*, 62 Wash. 432, 113 Pac. 1112.

Right of municipality to exercise power of eminent domain without legislative authority. *Ann. Cas.* 1912C, 199.

Quantity and location of property taken by municipality under power of eminent domain as matter of discretion. 2 *Ann. Cas.* 947.

State or public lands as subject to condemnation by municipal corporation. 15 *Ann. Cas.* 488.

Right of municipality to condemn land to construct spur-track connecting municipal works with railroad. *Ann. Cas.* 1912B, 382.

§ 9216. [7769.] Compensation by Assessment or From Funds.

When the corporate authorities of any such city shall desire to condemn land or other property, or damage the same, for any purpose authorized by this act, such city shall provide therefor by ordinance, and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter prescribed, in this act: Provided, that no special assessment shall be levied under authority of this act except when made for the purpose of streets, avenues, alleys, or highways or alterations thereof or changes of the grade therein or other improvements in or adjoining the same, or for bridges, approaches, culverts, sewers, drains, ditches, public squares, drives or boulevards or for the purpose of draining swamps, marshes, tide flats, tide lands or ponds or for filling the same; and it is further provided, that when a street, avenue, highway or boulevard is established or widened to a width greater than one hundred and fifty feet the excess over and above the one hundred and fifty feet shall be paid out of the general fund of such city without any deduction for benefits of such excess. [L. '07, p. 317, § 2. Cf. L. '93, p. 189, § 2; L. '05, p. 85, § 2.]

"This act" refers to chapter 153 of the Laws of 1907, contained in this chapter.

Cited in 27 Wash. 527; 34 Wash. 354; 43 Wash. 633; 44 Wash. 63; 55 Wash. 663, 664; 72 Wash. 620; 73 Wash. 234; 77 Wash. 674, 675; 80 Wash. 228, 229, 233; 94 Wash. 428.

Public Purposes in General: See Remington's Digest, Em. Dom., §§ 11—27, and cases cited.

Necessity of Compensation: See Remington's Digest, Em. Dom., §§ 48—53, and cases cited.

Taking or Injuring Property: See Remington's Digest, Em. Dom., §§ 54—72, and cases cited.

See notes to § 921, *supra*.

§ 9217. [7770.] Petition to Superior Court.

Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this act or any other improvement that such city is authorized to make, the making of which will require that property be taken or damaged for

public use, such city shall file a petition in the superior court of the county in which such land is situated, in the name of the city, praying that just compensation, to be made for the property to be taken or damaged for the improvement or purpose specified in such ordinance, be ascertained by a jury or by the court in case a jury be waived. [L. '13, p. 7, § 1. Cf. L. '07, p. 317, § 3; L. '93, p. 190, § 3; L. '05, p. 86, § 3.]

"This act": See note to § 9216.

Cited in 77 Wash. 675; 80 Wash. 228, 229, 233.

Petition in General: See Remington's Digest, Em. Dom., §§ 119—122, and cases cited.

Under this section an ordinance providing for the submission of a plan or intent to acquire a gravity water system, containing a recital that it is proposed to acquire the necessary lands by purchase

or condemnation, and describing the location of a proposed dam and intake, sufficiently manifests an intent to condemn land, as against another city seeking to condemn the same land; since the statutes are to be strictly construed only as against the owners of the land, and the law does not require any formal direction to the city attorney to institute condemnation proceedings: *Chehalis v. Centralia*, 77 Wash. 673, 138 Pac. 293.

§ 9218. [7771.] Contents of Petition.

Such petition shall contain a copy of said ordinance, certified by the clerk under the corporate seal, a reasonably accurate description of the lots, parcels of land and property which will be taken or damaged, and the names of the owners and occupants thereof and of persons having any interest therein, so far as known, to the officer filing the petition or appearing from the records in the office of the county auditor. [L. '07, p. 318, § 4. Cf. L. '93, p. 190, § 4; L. '05, p. 86, § 4.]

Cited in 57 Wash. 296, 297; 77 Wash. 600, 676; 80 Wash. 228, 229, 233; 82 Wash. 487.

See notes to § 921, *supra*.

Upon a condemnation proceeding by a city to condemn property for widening and extending a street, under this act, it is error to strike out a cross-petition of certain defendant setting up a leasehold interest in a building upon the property: *Seattle v. Park*, 42 Wash. 151, 84 Pac. 644.

This act does not require, in proceedings to condemn property for a regrade of city streets, any answer from the original parties to the suit, and a cross-complaint filed by such a party is properly struck out: *Manhattan Bldg. Co. v. Seattle*, 52 Wash. 226, 100 Pac. 330.

In condemnation proceedings by a city

under this section, etc., no answer offering an issue is necessary: *Tacoma v. Wetherby*, 57 Wash. 295, 106 Pac. 903.

In proceedings by a city to condemn land for a street, under this section, the petition need not describe land damaged or the whole tract out of which the land is taken, but only the land taken: *Tacoma v. Wetherby*, 57 Wash. 295, 106 Pac. 903.

Under this section, requiring a reasonably accurate description, a petition in condemnation proceedings is not fatally defective in that the description of the property did not close, where it was sufficient to identify the property, and the same was properly described in the decree; accuracy only in the decree being essential: *Chehalis v. Centralia*, 77 Wash. 673, 138 Pac. 293.

§ 9219. [7772.] Service of Summons.

Upon the filing of the petition aforesaid a summons, returnable as summons in other civil actions, shall be issued and served upon the person made parties defendant, together with a copy of the petition, as in other civil actions. And in case any of them are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon absent defendants in other civil actions. Notice so given by publication shall be sufficient to

authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served. [L. '07, p. 318, § 5. Cf. L. '93, p. 191, § 5; L. '05, p. 86, § 5.]

Cited in 57 Wash. 296, 297; 83 Wash. 285; 84 Wash. 96.

See notes to § 922, supra.

§ 9220. [7773.] State, School or County Lands—Auditor Served.

In case the land, real estate, premises or other property sought to be appropriated or damaged is state, school or county land, the summons and copy of petition shall be served on the auditor of the county in which such land, real estate, premises or other property is situated. Service upon other parties defendant shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions. [L. '07, p. 318, § 6. Cf. L. '93, p. 191, § 6; L. '05, p. 86, § 6.]

Cited in 57 Wash. 296, 297.

§ 9221. [7774.] Jury Trial—Right to Separate Juries.

Upon the return of said summons, or as soon thereafter as the business of court will permit, the said court shall proceed to the hearing of such petition and shall impanel a jury to ascertain the just compensation to be paid for the property taken or damaged, but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as to the compensation or damages to be paid to any one or more of such defendants or parties in interest. [L. '07, p. 318, § 7. Cf. L. '93, p. 181, § 7; L. '05, p. 87, § 7.]

Cited in 57 Wash. 229, 296, 297, 299; 62 Wash. 434; 65 Wash. 106.

See notes to §§ 925, 926, supra.

In eminent domain proceedings by a city, it is discretionary, under this section, to refuse separate trials to owners of the property, to be reviewed only for abuse of discretion: *Tacoma v. Wetherby*, 57 Wash. 295, 106 Pac. 903.

Where the city, at the commencement of the trial, offered the petition and certain documentary evidence to show its right to condemn, it is not necessary to reoffer the same upon taking up the question of damages to any particular property, and the same is in evidence for all

purposes: *Jackson Street, In re*, 47 Wash. 243, 91 Pac. 970.

This section does not require, in proceedings to condemn property for a re-grade of city streets, any answer from the original parties to the suit, and a cross-complaint filed by such a party is properly struck out: *Manhattan Building Co. v. Seattle*, 52 Wash. 226, 100 Pac. 330.

This section leaves it discretionary to grant separate trials, and the action of the court will be reviewed only for an abuse of discretion: *Manhattan Building Co. v. Seattle*, 52 Wash. 226, 100 Pac. 330.

§ 9222. [7775.] Jury to Determine Compensation.

Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: Provided, such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation. [L. '07, p. 319, § 8. Cf. L. '93, p. 191, § 8; L. '05, p. 87, § 8.]

Cited in 57 Wash. 296, 297; 59 Wash. 114.

This section does not authorize an owner in condemnation proceedings to

claim damages to a lot contiguous to the lot taken, where the lots were separate and appropriated to distinct uses: *Seattle v. Atwood*, 59 Wash. 112, 109 Pac. 326.

§ 9223. [7776.] Jury may View Premises.

The court may upon the motion of such city or of any defendant direct that said jury (under the charge of any officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement. [L. '07, p. 319, § 9. Cf. L. '93, p. 192, § 9; L. '05, p. 87, § 9.]

Cited in 47 Wash. 246.

A view of premises by a jury may be ordered in condemnation proceedings under section 344, nor is said section

limited by this section, authorizing such views in civil actions: *Jackson Street, In re*, 47 Wash. 243, 91 Pac. 970.

§ 9224. [7777.] Damage to Buildings.

If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [L. '07, p. 319, § 10. Cf. L. '93, p. 192, § 10; L. '05, p. 87, § 10.]

Cited in 47 Wash. 247; 58 Wash. 597; 59 Wash. 113.

See notes to § 926, supra.

It is not error prejudicial to the owner to instruct the jury that they should determine the value of a building and add its cost to its removal, if it was damaged by its removal and could not be put in as good condition as before, although the instruction goes beyond this section: *Tacoma v. Bonnell*, 58 Wash. 593, 109 Pac. 60.

This section is constitutional, it being

within the power of the legislature to provide that a removal is not a taking of property, where there was but one tract of land involved: *Tacoma v. Bonnell*, 58 Wash. 593, 109 Pac. 60.

In proceedings to condemn a specified lot on which there was located a building, under this section, damages are not authorized for readjustment of the building to another contiguous lot which was a separate unit, put to a distinct use, and which was not taken or damaged: *Seattle v. Atwood*, 59 Wash. 112, 109 Pac. 326.

§ 9225. [7778.] Separate Findings—Apportionment of Compensation.

If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may be separately found by the jury on the request of any party. In making such findings, the jury shall first find and set forth in their verdict the total amount of the damage to said land and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same, in proportion to their several interests and claims and the damages sustained by them respectively, and set forth such apportionment in their verdict. No delay in ascertaining the amount of compensation shall be occasioned by any

doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case, the jury shall ascertain the entire compensation or damage that should be paid for the property and the entire interests of all the parties therein, and the court may thereafter require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation. [L. '07, p. 319, § 11.]

Cited in 57 Wash. 292; 66 Wash. 450.

In eminent domain proceedings by a city this section authorizes the assessment of one recovery of damages against

the landlord and tenant, leaving it for division between the parties entitled thereto: Western Avenue, In re, 57 Wash. 290, 106 Pac. 901.

§ 9226. [7779.] New Trial—Judgment—Continuance.

Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgment shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court may impanel a jury to ascertain the compensation so to be made to such defendant or defendants for private property taken or damaged, and like proceedings shall be had for such purpose as herein provided. [L. '07, p. 320, § 12. Cf. L. '93, p. 193, § 11; L. '05, p. 88, § 11.]

Cited in 94 Wash. 429.

§ 9227. [7780.] Change of Ownership.

The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be made for the property (or the damage thereto) which has been owned by the person or persons so ceasing to own the same, and the court may upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order, rule, judgment or decree as the nature of the case may require. [L. '07, p. 320, § 13. Cf. L. '93, p. 193, § 12; L. '05, p. 88, § 12.]

§ 9228. [7781.] Infants or Insane Persons—Guardian Ad Litem.

When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or insane or distracted person to appear and defend for him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted

person in such property or the compensation which shall be awarded therefor. [L. '07, p. 321, § 14. Cf. L. '93, p. 194, § 14; L. '05, p. 89, § 14.]

Cited in 102 Wash. 399.

§ 9229. [7782.] Findings.

When the ordinance providing for any such improvement provides that compensation therefor shall be paid in whole or in part by special assessment upon property benefited, the jury or court, as the case may be, shall find separately:

1. The value of land taken at date of trial;
2. The damages which will accrue to the part remaining because of its severance from the part taken, over and above any local or special benefits arising from the proposed improvement. No lot, block, tract or parcel of land found by the court or jury to be so damaged shall be assessed for any benefits arising from such taking only;
3. The gross damages to any land or property not taken (other than damages to a remainder, by reason of its severance from the part taken), and in computing such gross damages shall not deduct any benefits from the proposed improvement. Such finding by the court or jury shall leave any lot, block, parcel or tract of land, or other property subject to assessment for its proportion of any and all local and special benefits accruing thereto by reason of said improvement.

When such ordinance does not provide for any assessment in whole or in part on property specially benefited, the compensation found for land or property taken or damaged shall be ascertained over and above any local or special benefits from the proposed improvement.

Such city or town may offset against any award of the jury or court for the taking or damaging of any lot, block, tract or parcel of land or other property, any general taxes or local assessments unpaid at the time such award is made. Such offset shall be made by deducting the amount of such unpaid taxes and assessments at the time of payment of the judgment or issuance of a warrant in payment of such judgment. [L. '09, p. 723, § 1. Cf. L. '93, p. 194, § 15; L. '05, p. 89, § 15; L. '07, p. 321, § 15.]

Cited in 38 Wash. 28; 49 Wash. 112; 58 Wash. 596; 69 Wash. 659; 75 Wash. 379; 77 Wash. 97; 83 Wash. 285; 94 Wash. 586.

This section does not require a city, on condemning land for opening a street, to include the improvement of the street or the establishment of a grade; hence the award of damages for compensation for merely opening a street does not bar an assessment for benefits in a subsequent proceeding to grade and plank the street: *Martenis v. Tacoma*, 66 Wash. 92, 118 Pac. 882.

In eminent domain proceedings by a city, the jury is to determine only the

damage to the land taken, and the damages resulting to land not taken: *Tacoma v. Bonnell*, 58 Wash. 593, 109 Pac. 60.

An award of damages in eminent domain proceedings to take land for street purposes, after fixing the amount for the land taken, reciting "For damages to remaining land by reason of severance, \$150," must, in the light of instructions directing the jury to offset the benefits against such damages, be construed as a net damage over and above special benefits, exempting the land from assessment, as authorized by this section: *Pine Street Assessment, In re*, 83 Wash. 281, 145 Pac. 179.

§ 9230. [7783.] Judgment—Appeal.

Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases, provided that in case any defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement unless appealed from, and no appeal from the same shall delay proceedings under said ordinance, if such city shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court of the state by any party to the proceedings the money so paid into the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court and final judgment may be rendered in the superior court as in other cases. [L. '07, p. 321, § 16. Cf. L. '93, p. 194, § 16; L. '05, p. 89, § 16.]

Cited in 67 Wash. 541, 543; 74 Wash. 134; 80 Wash. 689; 97 Wash. 516.

See notes to § 931, *supra*.

Upon the condemnation of a water system of a public service corporation, under this and the next section, entitling the city to take possession upon the payment of the jury's award of damages, the city is not entitled to an accounting of the earnings and profits of the condemned

property previous to the payment of the money, although, upon such payment, the title relates back to the date of the award: *State ex rel. Washington Public Service Co. v. Superior Court*, 86 Wash. 155, 149 Pac. 652.

Effect of Appeal and Supersedeas: *Rainier Avenue, In re*, 80 Wash. 688, 141 Pac. 1137.

§ 9231. [7784.] Title Vests upon Payment into Court.

The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the city or town shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon, the title to any property so taken shall be vested in fee simple in such city or town. [L. '07, p. 322, § 17. Cf. L. '93, p. 195, § 17; L. '05, p. 90, § 17.]

Cited in 65 Wash. 107; 66 Wash. 449; 171, 172; 86 Wash. 160, 627; 100 Wash. 67 Wash. 543; 74 Wash. 134; 83 Wash. 96, 640.

See notes to § 927, *supra*.

The title to the property condemned does not pass until the payment into court of the damages awarded, under this section: *Port of Seattle v. Yesler Estate*, 83 Wash. 166, 145 Pac. 209.

In condemnation proceedings by a city to acquire a location for garbage inciner-

ators and dumping grounds, it is not necessary to state in the petition that provision has been made for payment of the award; since, by this section, possession may be taken only on payment of the judgment: *Hoquiam v. Lenhart*, 86 Wash. 625, 150 Pac. 1196.

§ 9232. [7785.] Payment from General Fund.

When the ordinance under which said improvement is ordered to be made shall not provide that such improvement shall be made wholly by special assessment upon property benefited, the whole amount of such damage and costs, or such part thereof as shall not be assessed upon property benefited shall be paid from the general fund of such city or town, and if sufficient funds therefor are not already provided, such city or town shall levy and collect a sufficient sum therefor as part of the general taxes of such city or town, or may contract indebtedness by the issuance of bonds or warrants therefor as in other cases of internal improvements. [L. '07, p. 323, § 18. Cf. L. '93, p. 195, § 18; L. '05, p. 90, § 18.]

Cited in 66 Wash. 559; 72 Wash. 620.

Under an ordinance for the improvement of a street the cost and expense to be paid "wholly by special assessment upon the property to be benefited," the

eminent domain commissioners have no power to assess the city generally for a portion of the expense, in view of this section and section 9237, *infra*: *Spokane v. Curtiss*, 66 Wash. 555, 120 Pac. 70.

§ 9233. [7786.] Payment by Special Assessment.

When such ordinance under which said improvement shall be ordered, shall provide that such improvement shall be paid for, in whole or in part, by special assessment of property benefited thereby, the damages and costs awarded, or such part thereof as is to be paid by special assessment, shall be levied, assessed and collected in the manner hereinafter provided. [L. '07, p. 323, § 19. Cf. L. '93, p. 196, § 19; L. '05, p. 91, § 19.]

Cited in 40 Wash. 148, 149; 66 Wash. 334; 86 Wash. 160.

Under this and the next section, and section 9237, *infra*, it is within the power of the council to make the apportionment, and for the commissioners to act only when the council fails to do so; and in

any event, the benefit to the public must be a special and not a general benefit, and findings of the court or commissioners are conclusive on appeal: *Fifth Avenue etc., In re*, 66 Wash. 327, 119 Pac. 852.

§ 9234. [7787.] Supplementary Petition for Assessment—Commissioners Appointed.

Such city may file in the same proceeding a supplementary petition, praying the court that an assessment be made for the purpose of raising an amount necessary to pay the compensation and damages which may or shall have been awarded for the property taken or damaged, with costs of the proceedings, or for such part thereof as the ordinance shall provide. The said court shall thereupon appoint three competent persons as commissioners to make such assessment, or if there be a board of eminent domain commissioners of such city, appointed under the provisions of this act, said proceeding for assessment shall be referred to said board.

Said commissioners shall include in such assessment the compensation and damages which may or shall have been awarded for the property taken or damaged, with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceeding was referred to them, together with the probable further costs and expenses of the proceedings, including therein the estimated costs of making and collecting such assessment. [L. '07, p. 323, § 20. Cf. L. '93, p. 196, § 20; L. '05, p. 91, § 20.]

"This act": See note to § 9216.

Cited in 61 Wash. 251; 66 Wash. 334; 73 Wash. 695, 696; 82 Wash. 245; 84 Wash. 98; 86 Wash. 9; 87 Wash. 222; 111 Wash. 108.

Reassessments, Charges for Interest:

See Remington's Digest, Mun. Corp., § 273; Spokane v. Kraft, 82 Wash. 238, 144 Pac. 286; Kuehl v. Edmonds, 91 Wash. 195, 157 Pac. 850; Collins v. Ellensburg, 91 Wash. 232, 157 Pac. 864.

§ 9235. [7788.] Board of Eminent Domain — Commissioners — Appointment, etc.

At any time after the taking effect of this act, any such city may petition the superior court of the county in which said city is situated, that a board of eminent domain commissioners be appointed to make assessments in all condemnation proceedings instituted by such city. Said superior court shall thereupon, by order duly entered in its records, appoint three competent persons as commissioners who shall be known as and who shall constitute the "board of eminent domain commissioners of the city of —," and who shall thereafter make assessments in all condemnation proceedings instituted by such city. The order of the court shall provide that one of the members of such board shall serve for one year, one for two years and one for three years, from the date of their appointment and until their successors are appointed and qualified. Annually thereafter, said superior court shall appoint one such person as such commissioner, whose term shall begin on the same day of the month on which the first order of appointment was made and continue for three years thereafter and until his successor is appointed and qualified. If any commissioner shall be disqualified in any proceeding by reason of interest, or for any other reason, said superior court shall appoint some other competent person to act in his place in such proceeding. [L. '07, p. 324, § 21. Cf. L. '93, p. 196, § 21.]

"This act": See note to § 9216.

Cited in 38 Wash. 29; 40 Wash. 153; 47 Wash. 537; 59 Wash. 486; 72 Wash. 573; 87 Wash. 219.

In General: See Remington's Digest, Mun. Corp., § 227, and cases cited.

The board of eminent domain commis-

sioners created by this section are city officials, and not within Constitution, Article XI, section 5, requiring all county, township, precinct, or district officers to be elected: Blewett Street, Seattle, In re, 59 Wash. 485, 110 Pac. 29.

§ 9236. [7789.] Commissioners—Oath—Salary Account.

All commissioners before entering upon their duties shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to the law. Every commissioner shall receive compensation at the rate of five dollars per day for each

day actually spent in making the assessment herein provided for: Provided, that in any city of the first class the superior court of the county in which said city is situated may, by order duly entered in its records, fix the compensation of each commissioner in an amount in no case to exceed seven and one-half (\$7.50) dollars per day for each day actually spent in making the assessment herein provided for. Each commissioner shall file in the proceeding in which he has made such assessment his account, stating the number of days he has actually spent in said proceeding, and upon the approval of said account by the judge before whom the proceeding is pending, the comptroller or city clerk of such city shall issue a warrant in the amount approved by the judge upon the special fund created to pay the awards and costs of said proceeding, and the fees of such commissioner so paid shall be included in the cost and expenses of such proceedings. In case such commissioners are, during the same period, or parts thereof, engaged in making assessment in different proceedings, in rendering their accounts they shall apportion them to the different proceedings in proportion to the amount of time actually spent by them on the assessment in each proceeding. [L. '15, p. 447, § 2. Cf. L. '07, p. 324, § 22; L. '93, p. 196, § 22.]

§ 9237. [7790.] Assessment of Special Benefits—Apportionment—Improvement Districts.

It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made and the property which will be especially benefited thereby, and to estimate what proportion, if any, of the total cost of such improvement will be a benefit to the public, and what proportion thereof will be a benefit to the property to be benefited, and apportion the same between the city and such property so that each shall bear its relative equitable proportion, and having found said amounts, to apportion and assess the amount so found to be a benefit to the property upon the several lots, blocks, tracts and parcels of land, or other property in the proportion in which they will be severally benefited by such improvement: Provided, that the legislative body of the city may in the ordinance initiating any such improvement establish an assessment district and said district when so established shall be deemed to include all the lands or other property especially benefited by the proposed improvement, and the limits of said district when so fixed shall be binding and conclusive on the said commissioners: And provided further, that no property shall be assessed a greater amount than it will be actually benefited. That all leasehold rights and interests of private persons, firms or corporations in or to harbor areas located within the corporate limits of an incorporated city or town are for the purpose of assessment for the payment of the awards, interest and costs of any improvement authorized by this act, declared to be real property, and all such leasehold rights and interests may be assessed and reassessed in accordance with the special benefits received for the purpose of paying the cost of any such improvement heretofore made or which may hereafter be made in accordance with law. [L. '15, p. 448, § 3. Cf. L. '09, p. 724, § 1; L. '93, p. 197, § 22; L. '05, p. 91, § 22; L. '97, p. 325, § 23.]

Cited in 38 Wash. 29; 40 Wash. 153; 44 Wash. 64; 47 Wash. 537; 48 Wash. 602; 54 Wash. 461; 61 Wash. 363; 62 Wash. 434; 66 Wash. 329, 330, 334, 335, 558, 559; 72 Wash. 620, 621; 75 Wash. 378; 77 Wash. 402, 574; 85 Wash. 538; 87 Wash. 221; 94 Wash. 586.

ASSESSMENTS FOR BENEFITS AND SPECIAL TAXES: See Remington's Digest, Mun. Corp., §§ 198—287, and cases cited. See, also:

§ 209. **Improvements—Reassessments—State Property:** Reassessment Second School Addition, In re, 110 Wash. 104, 184 Pac. 1092.

§ 241. **Remote or Speculative Benefits—Evidence—Sufficiency:** West Marginal

Way, Seattle, In re, 112 Wash. 418, 192 Pac. 961.

§ 256. **Validity of Assessment—Estoppel:** Allen v. Spokane, 108 Wash. 407, 184 Pac. 312.

§ 264. **Confirmation of Assessments—Appeal—Filing Transcript—Excuse for Failure:** Local Improvement Districts Nos. 29 to 37, In re, 108 Wash. 211, 183 Pac. 107.

§ 267-1. **Review:** West Marginal Way, Seattle, In re, 112 Wash. 418, 192 Pac. 961.

§ 269. **Action to Set Aside:** Allen v. Spokane, 108 Wash. 407, 184 Pac. 312.

§ 270. **Reassessments—State Property:** Reassessment Second School Addition, In re, 110 Wash. 104, 184 Pac. 1092.

§ 9238. [7791.] **Assessment-roll.**

Such commissioners in each proceeding shall also make or cause to be made an assessment-roll in which shall appear the names of the owners, so far as known, the description of each lot, block, tract or parcel of land or other property and the amounts assessed as special benefits thereto, and in which they shall set down as against the city the amount they shall have found as public benefit, if any, and certify such assessment-roll to the court before which said proceeding is pending, within sixty days after their appointment or after the date of the order referring said proceedings to them, or within such extension of said period as shall be allowed by the court. [L. '07, p. 325, § 24. Cf. L. '93, p. 197, § 23; L. '05, p. 92. § 23.]

Cited in 59 Wash. 51; 85 Wash. 258.

In General: See Remington's Digest, Mun. Corp., § 252, and cases cited.

In proceedings by a city to levy assessments for a local improvement, where eminent domain commissioners have made up an assessment-roll and notice has been given to a property owner of the amount of benefits assessed against his property,

and the owner files no objections and does not appear, the court in confirming the assessment has no authority to increase the same; since its order has the effect of a default judgment, the hearing being conducted as in other proceedings, under this act: Sixth Avenue West, Seattle, In re, 59 Wash. 41, 109 Pac. 1052, Ann. Cas. 1912A, 1047.

§ 9239. [7792.] **Hearing on Assessment—Notice.**

After the return of such assessment-roll, the court shall make an order setting a time for the hearing thereof before the court, which day shall be at least twenty days after the return of such roll. It shall be the duty of such commissioners to give notice of such assessment and of the day fixed by the court for the hearing thereof in the following manner:

1. They shall at least twenty days prior to the date fixed for the hearing on said roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

“Title of Cause. To —: Pursuant to an order of the superior court of the state of Washington, in and for the county of —, there will be a hearing in the above-entitled cause on — at — upon the assessment-roll prepared by the commissioners heretofore appointed by said court to assess the property specially benefited by the (here describe nature of

improvement); and you are hereby required if you desire to make any objections to said assessment-roll, to file your objections to the same before the date herein fixed for the hearing upon said roll, a description of your property and the amount assessed against it for the aforesaid improvement is as follows: (Description of property and amount assessed against it.)

Commissioners."

2. They shall cause at least twenty days' notice to be given by posting notice of the hearing on such assessment-roll in at least three public places in such city, one of which shall be in the neighborhood of such proposed improvement, and when a daily newspaper is published in such city, by publishing the same in at least five successive issues of said paper, or if no daily newspaper is published in such city and a weekly newspaper is published therein, then in at least each issue of such weekly newspaper for two successive weeks or if no daily or weekly newspaper is published in such city, then in a newspaper published in the county in which such city is situated. Such notice so required to be posted and published, may be substantially as follows:

"Title of Cause. Special assessment notice. Notice is hereby given to all persons interested, that an assessment-roll has been filed in the above-entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that said roll has been set down for hearing on the ____ day of ____ at _____. The boundaries of said assessment district are substantially as follows: (here insert an approximate description of the assessment district). All persons desiring to object to said assessment-roll are required to file their objections before said date fixed for the hearing upon said roll, and appear on the day fixed for hearing before said court.

Commissioners."

[L. '07, p. 325, § 25. Cf. L. '93, p. 197, § 24; L. '05, p. 92, § 24.]

Cited in 73 Wash. 695, 696; 75 Wash. 378; 83 Wash. 285; 84 Wash. 96; 85 Wash. 258.

Notice: See Remington's Digest, Mun. Corp., §§ 229—232, and cases cited.

§ 9240. [7793.] Proof of Service.

On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent, or caused to be sent, by mail, to the owners whose property has been assessed and whose names and addresses are known to them, the notice hereinbefore required to be sent by mail to the owners of the property assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notice required by this act to be posted, setting forth when and in what manner the same was posted. Such affidavits shall be

received as prima facie evidence of a compliance with this act in regard to giving such notices. They shall also file an affidavit of publication of such notice in like manner as is required in other cases of affidavits of publication of notice of summons. [L. '07, p. 327, § 26. Cf. L. '93, p. 199, § 25; L. '05, p. 93, § 25.]

"This act": See note to § 9216.

§ 9241. [7794.] Continuance of Hearing.

If twenty days shall not have elapsed between the first publication or the posting of such notices and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter, until final judgment on the assessments; and if the notice given shall prove invalid or insufficient the court shall order new notice to be given. [L. '07, p. 327, § 27. Cf. L. '93, p. 199, § 26; L. '05, p. 94, § 26.]

§ 9242. [7795.] Objections to Report—Evidence.

Any person interested in any property assessed may file objections to such report at any time before the day set for hearing said roll. As to all property to the assessment of which objections are not filed as herein provided, default may be entered and the assessment confirmed by the court. On the hearing, the report of such commissioners shall be competent evidence and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, tried by the court without a jury, and if it shall appear that the property of the objector is assessed more or less than it will be benefited, or more or less than its proportionate share of the costs of the improvement, the court shall so find, and also find, the amount in which said property ought to be assessed and the judgment shall be entered accordingly. [L. '07, p. 328, § 28. Cf. L. '93, p. 199, §§ 27, 28; L. '05, p. 94, §§ 27, 28.]

Cited in 40 Wash. 156; 61 Wash. 363; 66 Wash. 329, 330, 560; 72 Wash. 573; 77 Wash. 402, 576; 87 Wash. 377; 100 Wash. 639.

Hearing, in General: See Remington's Digest, Mun. Corp., § 260, and cases cited.

Objections, Estoppel and Waiver: See Remington's Digest, Mun. Corp., §§ 256—259, and cases cited.

Under this section "may be entered" should not be construed to mean "must," in view of other provisions of the statute authorizing the court to apportion part of the cost of the improvement to the city, and to change any assessment or recast the same according to the "principles" of the act, which appear to require each parcel of land to "bear its relative

equitable proportion" of the cost: *Seattle v. Sylvester-Cowen Inv. Co.*, 55 Wash. 659, 104 Pac. 1121.

Under this and the next section the extent of the benefits is a question of fact to be determined by the court from the weight of the evidence, upon which the opinion of persons having knowledge of the situation is competent evidence, and assessments made contrary thereto may be changed as arbitrary: *Empire Way, In re*, 100 Wash. 636, 171 Pac. 1010.

The findings of the superior court made upon attacking the assessment-roll for a local improvement in eminent domain proceedings by cities, in the absence of exceptions, are conclusive on appeal, in view of this section: *Shilshole Avenue, In re*, 85 Wash. 522, 148 Pac. 781.

§ 9243. [7796.] Modification of Assessment.

The court before which any such proceedings may be pending shall have authority at any time before final judgment to modify, alter, change,

annul or confirm any assessment returned as aforesaid, or cause any such assessment to be recast by the same commissioners, whenever it shall be necessary for the obtainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this act, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises. [L. '07, p. 328, § 29. Cf. L. '93, p. 200, § 29; L. '05, p. 94, § 29.]

"This act": See note to § 9216.

Cited in 61 Wash. 363; 66 Wash. 329, 330, 560; 75 Wash. 378; 77 Wash. 402.

In General: See Remington's Digest, Mun. Corp., §§ 261—266, and cases cited.

§ 9244. [7797.] Judgment, Effect and Lien of.

The judgment of the court shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a lien upon the property assessed from the date thereof until payment shall be made, and said lien shall be paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for assessments for general taxes. [L. '15, p. 449, § 4. Cf. L. '07, p. 328, § 30; L. '93, p. 200, § 30; L. '05, p. 95, § 30.]

Cited in 40 Wash. 156; 59 Wash. 50, 51; 80 Wash. 486; 85 Wash. 150, 151, 256—258.

Lien in General: See Remington's Digest, Mun. Corp., § 284.

There is no breach of a covenant against encumbrancers from the fact that, prior to conveyance, the city had instituted condemnation proceedings against

the property conveyed for the purpose of paying the cost of widening and extending a street, under which a special assessment had been levied and confirmed by judgment of the court subsequent to the conveyance, since the lien of such assessment would not attach until the date of the judgment, under this section: *Flajole v. Schulze*, 80 Wash. 483, 141 Pac. 1026.

§ 9245. [7798.] Assessment-roll to be Certified.

The clerk of the court in which such judgment is rendered shall certify a copy of the assessment-roll and judgment to the treasurer of the city, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is rendered: Provided, that if upon such appeal, the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment-roll shall describe the lots, blocks, tracts, parcels of land or other property assessed, and the respective amounts assessed on each, and shall be sufficient warrant to the city treasurer to collect the assessment therein specified. In no case, however, shall a copy of such assessment-roll and judgment be certified to the city treasurer unless and until the awards of the jury shall have first been accepted by the city council or other legislative body

as provided by law, or the time for rejecting the same shall have expired. [L. '15, p. 449, § 5. Cf. L. '07, p. 329, § 31; L. '93, p. 200, § 31; L. '05, p. 95, § 31.]

Cited in 85 Wash. 147, 151, 258.

§ 9246. [7799.] Publication of Notice.

Whenever the assessment for any such improvement shall be immediately payable, the owner of any such lot, tract or parcel of land or other property so assessed may pay such entire assessment, or any part thereof, without interest, within thirty (30) days after the notice of such assessment.

The city treasurer shall, as soon as the certified copy of the assessment-roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two (2) consecutive daily, or two (2) consecutive weekly issues, and then by posting four notices thereof in public places along the line of the proposed improvement, that the said roll is in his hands for collection, and that any assessment thereon, or any part thereof, may be paid within thirty (30) days from the date of the first publication or posting of said notice, without penalty, interest or costs, and if not so paid, the same shall thereupon become delinquent. [L. '15, p. 450, § 6. Cf. L. '07, p. 329, § 32; L. '93, p. 200, § 32; L. '05, p. 95, § 32.]

§ 9247. [7800.] Notice by Mail—Duty of City Treasurer.

It shall be the duty of the city treasurer into whose hands such judgment and assessment-roll shall come, to mail notices of such assessment to the persons whose names appear on the assessment-roll, so far as the addresses of such persons are known to him. Any such treasurer omitting so to do, shall be liable to a penalty of five dollars for every such omission; but the validity of the special assessment shall not be affected by such omission. When any assessment or assessments are paid, it shall be the duty of the treasurer to write the word "paid" opposite the same together with the name and postoffice address of the person making the payment and the date of payment. The owner may annually notify the treasurer of his address and it shall be the duty of the treasurer to mail the notice above provided for to such address. [L. '07, p. 330, § 33. Cf. L. '93, p. 201, § 33; L. '05, p. 95, § 33.]

§ 9248. [7801.] Return of Assessment-roll—Delinquency.

Whenever any assessment payable immediately shall become delinquent and whenever any installment shall become delinquent, the city treasurer shall forthwith proceed to enforce the collection of such delinquent and unpaid assessment or installment as in this act provided.

Within fifteen days from the expiration of the time limited for the payment of any such assessments or installments, the treasurer shall return the assessment-roll to the comptroller, if there be such officer of the city or town; otherwise, to the city or town clerk, designating thereon the assessments or installments paid and those unpaid. The comptroller or clerk, as the case may be, shall, upon receipt of said roll, credit the

treasurer with the amount of assessments or installments collected thereon, and thereupon issue and annex to said roll a warrant directing the treasurer to sell all the property described in said roll upon which assessments are levied, whether in the name of a designated owner or in the name of an unknown owner, to satisfy all delinquent and unpaid assessments or installments upon said roll, with costs, interest and charges. All assessments or installments unpaid at the expiration of the time fixed herein for the payment of the same, shall bear interest at the rate of ten per cent per annum from said date until paid. [L. '15, p. 450, § 7. Cf. L. '07, p. 330, § 34; L. '93, p. 201, § 34; L. '05, p. 96, § 34.]

Cited in 34 Wash. 354.

Enforcement, in General: See Remington's Digest, Mun. Corp., §§ 288—309, and cases cited.

§ 9249. [7801a.] Law Governing Enforcement of Assessments.

The collection and enforcement of such delinquent installments shall be governed by and conform to the provisions of chapter 153, Session Laws of 1907, of the State of Washington, relating to the collection and enforcement of delinquent assessments, except as otherwise provided in this act.

Whenever the word "assessment" or the word "assessments" is used in said chapter 153, the same shall be held and construed to include the word "installment" or the word "installments." [L. '15, p. 451, § 8.]

"Chapter 153," refers to this chapter, §§ 9215 to 9279.

§ 9250. [7802.] Sale of Delinquent Property.

Such warrant issued for the purpose of making sale of said delinquent property shall be deemed and taken as an execution against said property for the amount of said assessments or installments with interest and costs, and the treasurer shall, within sixty days from the receipt thereof by him, commence the sale of said property and continue such sale from day to day thereafter, except on Sundays and legal holidays, until all the property described in said assessment-roll on which any such assessment or installment is delinquent and unpaid is sold. Such sale shall take place at the front door of the building in which the city council holds its sessions. The treasurer shall give notice of such sales by publishing a notice thereof once each week for three consecutive weeks in the official newspaper of the city, or if there be no such newspaper, then by publishing the same for said period in some newspaper published in the same county in which the city is situated, or if no such newspaper is published in such county, then in some newspaper published in the state of daily circulation in such county. Such notice shall contain a list of all property upon which such assessments or installments are delinquent with the amount of the assessment or installment, interest and costs to date of sale, including the cost of advertising such sale, together with the names of the owners of such property, or the words "unknown owners," as the same may appear upon said assessment-roll, and shall specify the time and place of sale, and that the property therein described will be sold to satisfy the assessment or installment, interest and costs due upon the same. All of such sales shall be

made between the hours of 10 o'clock A. M. and 4 o'clock P. M. Each lot or parcel of land or other property shall be sold separately and in the order in which the same appears on the assessment-roll, commencing at the head thereof. If there be no bidder for any lot or parcel of land or other property for a sum sufficient to pay the delinquent assessment or installment thereon, with interest and costs, the treasurer shall strike the same off to the city for the whole amount which he is required to collect by such sale. [L. '15, p. 451, § 9. Cf. L. '07, p. 330, § 35; L. '93, p. 202, § 35; L. '05, p. 96, § 35.]

Cited in 84 Wash. 90.

Sale of Land: See Remington's Digest, Mun. Corp., §§ 306—309, and cases cited.

§ 9251. [7803.] Sale, How Conducted—Certificate of.

All lots and parcels of land sold for delinquent improvement assessments, shall be sold to the person at such sale offering to pay the amount due on each tract or lot for the least quantity thereof to be taken from the east side of such tract or lot, and the remainder thereof shall be discharged from the lien. After receiving the amount of the assessment, penalty, cost and charges, the treasurer shall make out a certificate, dated on the day of sale, stating (when known) the name of the owner as given on the assessment-roll, a description of the land sold, the amount paid therefor, the name of the purchaser, that it was sold for the assessment, giving the name of the street or other brief designation of the improvement for which the assessment was made, and specifying that the purchaser will be entitled to a deed in two years from the date of sale unless redemption thereof be made. Such certificate shall be signed by the treasurer, and shall be delivered to the purchaser, and shall be by such purchaser recorded in the office of the county in which the lands are situated within three months from the date thereof. If not recorded within said time, the lien thereof shall be postponed to claims of subsequent purchasers and encumbrancers for value and in good faith who become such while the same is unrecorded. [L. '07, p. 331, § 36. Cf. L. '93, p. 203, § 36; L. '05, p. 97, § 36.]

Cited in 44 Wash. 137.

§ 9252. [7804.] Bidders not Taking—Sale to City.

If any bidder to whom any property is stricken off at such sale does not pay the assessment, interest and costs before 10 o'clock A. M. of the day following the day of such sale, such property must then be resold, or if the assessment sale is closed, be deemed to have been sold to the city or town, and a certificate of purchase shall be issued to the city therefor. [L. '07, p. 332, § 37. Cf. L. '05, p. 98, § 37; L. '93 p. 203, § 37.]

§ 9253. [7805.] Sale by City of Certificate.

The city comptroller, if there be such officer, and if not then the city or town clerk, shall be the custodian of all certificates for property sold to the city, and shall at any time within two years from the date of such certificate, and before redemption of the property therein described, sell and transfer any such certificate to any person who will pay to him the

amount for which the property therein described was stricken off to the city with interest subsequently accrued, thereon, and the treasurer may, if so authorized by the council, sell and transfer any such certificate in like manner after the expiration of such two years from the date of the certificate. [L. '07, p. 332, § 38. Cf. L. '93, p. 204, § 38; L. '05, p. 98, § 38.]

§ 9254. [7806.] Return of Sale.

Within ten days after the completion of the sale of all property described in such assessment-rolls, and authorized to be sold as aforesaid, the treasurer must make return to the comptroller, or other officer by whom the warrant was issued, of said assessment-roll, with a statement of his doings thereon, showing all property sold by him, to whom sold and the sum paid therefor. The city treasurer shall also within ten days after the completion of the sale of all property described in such assessment-rolls transmit to the treasurer of the county in which said city is located, a statement showing all property sold by him, when sold, to whom sold and the sums paid therefor and the description of the improvement under which said sale was made. The county treasurer shall thereupon note upon the general tax-rolls of said county the date of the sale, and the improvement for which the same was sold, and thereafter whenever the county treasurer shall furnish a statement of taxes to any property owner, he shall include therein a statement of such sale and the improvement for which the same was sold. [L. '07, p. 332, § 39. Cf. L. '93, p. 204 § 39; L. '05, p. 98, § 39.]

§ 9255. [7807.] Purchaser Acquires Lien—Interest.

The purchaser at such sale acquires a lien on the property so bid in by him for the amount paid by him at such sale as well as for all taxes and special assessments and all interest, penalties, costs and charges thereon, whether levied previously or subsequently to such sale, and whether for state, county, city or town purposes subsequently paid by him on such property, and shall be entitled to interest at the rate of fifteen per cent per annum on the original amount paid by him from the date of said sale and on such subsequent payments from the date of the respective payments. [L. '07, p. 333, § 40. Cf. L. '93, p. 204, § 40; L. '05, p. 98, § 40.]

Cited in 44 Wash. 138, 142.

This section requires such holder to pay subsequent taxes during the period of re-

demption as an additional means of notice to the owners of the land: *Albring v. Petronio*, 44 Wash. 132, 87 Pac. 49.

§ 9256. [7808.] Redemption Within Two Years.

Every piece of property sold for an assessment shall be subject to redemption by the former owner, or his grantee, mortgagee, heir or other representative at any time within two years from the date of the sale upon payment to the treasurer for the purchaser of the amount for which the same was sold, with interest at the rate of fifteen per cent per annum, together with all taxes and special assessments, interest, penalties and charges thereon paid by the purchaser of such piece of property since such sale, with like interest thereon. Unless written notice of taxes and assessments subsequently paid, and the amount thereof shall be deposited

with the treasurer, redemption may be made without including the same. On any such redemption being made, the treasurer shall give to the redemptioner a certificate of redemption therefor, and pay over the amount received from such redemption to the purchaser or his assigns. Should no redemption be made within said period of two years, the treasurer shall, on demand of the purchaser or his assigns, and the surrender to him of the certificate of purchase, execute to such purchaser or his assigns, a deed for the piece of property therein described: Provided, that no such deed shall be executed until the holder of such certificate of purchase shall have notified the owner of such piece of property that he holds such certificate, and that he will demand a deed therefor; and if, notwithstanding such notice, no redemption is made within sixty days from the date of the service or first publication of such notice, said holder shall be entitled to said deed. Said notice shall be given by personal service upon said persons: Provided, that in case said parties are nonresidents of the state or they cannot be found therein after diligent search, then such notice may be given by publication in a weekly newspaper published in said city once each week for three successive weeks or if no newspaper be published in said city, then publication shall be made as provided in section 9239. Such notice and return thereto, with the affidavit of the person claiming such deed showing that such service was made, shall be filed with the treasurer. Such deed shall be executed only for the piece of property described in the certificate, and after payment of all subsequent taxes and special assessments thereon. The deed shall be executed in the name of the city by which the improvement is made; shall recite in substance the matters contained in the certificate, the notice to the owner, and that no redemption has been made of the property within the time allowed by law. Such deed shall be signed and acknowledged by the city treasurer as such. The deed shall be prima facie evidence that the property was assessed as required by law; that the assessment was not paid; that the property was sold as required by law; that it was not redeemed; that notice had been given, and that the person executing the deed was the proper officer; and the deed shall be conclusive evidence of the regularity of all other proceedings from the assessment, inclusive, up to the execution of the deed. [L. '07, p. 333, § 41. Cf. L. '93, p. 204, § 41; L. '05, p. 99, § 41.]

Cited in 18 Wash. 561; 44 Wash. 136, 138—140; 74 Wash. 211; 89 Wash. 243, 246, 247, 249.

Under this section redemption must be made within two years after the sale and within sixty days after the publication of notice of demand for a deed: State ex rel. Abrashin v. Terry, 74 Wash. 208, 133 Pac. 386.

Ballinger's Code, section 815, requiring the holder of a certificate to give notice, by personal service or by publication, to the owners of the land that demand for a deed will be made, contemplates personal service if possible, and diligent search for the owner; and a holder who fails to pay subsequent taxes, or make inquiry at the office of the county treas-

urer for the address of the owner who had paid such taxes, does not exercise the diligence required of him by the statute before a deed can be issued: Albring v. Petronio, 44 Wash. 132, 87 Pac. 49.

There must be strict compliance with this section requiring service personally upon the "owner," which means the real owner of the property, unless something has been done to work an estoppel; hence notice by publication, to the holder of the record title under an absolute deed intended as a mortgage is not sufficient to cut off the owner's right of redemption, where she had been in possession for more than ten years, was the record owner when the assessments were levied, her name appeared on the assessment

rolls, and she lived in the immediate vicinity and could have been found if diligence had been used: *Smith v. Craver*, 89 Wash. 243, 154 Pac. 156.

In General: See *Remington's Digest*, Mun. Corp., § 307, and cases cited.

§ 9257. [7809.] Redemption Fund.

All moneys collected by the treasurer upon assessments under this act shall be kept as a separate fund and shall be used for no other purpose than the redemption of warrants or bonds drawn or issued against the fund. [L. '07, p. 335, § 42. Cf. L. '93, p. 206, § 42; L. '05, p. 100, § 42.]

"This act": See note to § 9216.

§ 9258. [7810.] Record of Payment—Redemption.

Whenever before the sale of any property the amount of any assessment thereon, with interest and costs accrued thereon, shall be paid to the treasurer, he shall thereupon mark the same paid, with the date of payment thereof on the assessment-roll, and whenever after sale of any property for any assessments, the same shall be redeemed, he shall thereupon enter the same redeemed with the date of such redemption on such record. Such entry shall be made on the margin of the record opposite the description of such property. [L. '07, p. 335, § 43. Cf. L. '93, p. 206, § 43; L. '05, p. 100, § 43.]

§ 9259. [7811.] Liability of Treasurer.

If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any property and afterward return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself or his clerk or assistant, he and his bond shall be liable to the holder of the certificate given to the purchaser at the sale for the amount of the face of the certificate, and a penalty of fifteen per centum additional thereto besides legal interest, to be demanded within two years from the date of the sale and recovered in any court having jurisdiction of the amount, and the city shall in no case be liable to the holder of such certificate. [L. '07, p. 335, § 44. Cf. L. '93, p. 206, § 44; L. '05, p. 100, § 44.]

§ 9260. [7812.] Reassessment.

If any assessment be annulled or set aside by any court, or be invalid for any cause, a new assessment may be made, and return and like notice given and proceedings had as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or other legislative body, and the superior court, shall perform the like duties and have like power in relation to any subsequent assessment as are hereby given in relation to the first assessment. [L. '07, p. 335, § 45. Cf. L. '93 p. 206, § 45; L. '05, p. 100, § 45.]

Cited in 97 Wash. 672.

In General: See *Remington's Digest*, Mun. Corp., §§ 270—275, and cases cited.

§ 9261. [7813.] Lien of Assessment.

All the assessments levied by any city under this act shall, from the date of the judgment confirming the assessment be a lien upon the real

estate upon which the same may be imposed, and such lien shall continue until such assessments are paid; if any proceedings taken for the enforcement thereof, shall be held void or invalid, such city shall provide by ordinance for new proceedings and a new sale for the enforcement thereof in like manner as hereinbefore provided; and in addition to the remedy hereinbefore provided, any city may enforce such lien by civil action in any court of competent jurisdiction in like manner and with like effect as actions for the foreclosure of mortgage. [L. '07, p. 336, § 46. Cf. L. '93, p. 207, § 46; L. '05, p. 101, § 46.]

"This act": See note to § 9216.

§ 9262. [7814.] Issuance of Bonds—Payment by Warrants—Installments.

The city council or other legislative body of any city may, in their discretion, provide by ordinance for the payment of the whole or any portion of the cost and expense of any local improvement authorized by law, by bonds of the improvement district, which bonds shall be issued and sold as herein provided. [L. '15, p. 452, § 10. Cf. L. '07, p. 336, § 47.]

§ 9263. [7814a.] Maturity—Interest Coupons—Funds.

Such bonds shall be issued only in pursuance of ordinances of the city directing the issuance of the same, and by their terms shall be made payable on or before a date not to exceed twelve years from and after their date, which latter date may be fixed by resolution or ordinance by council or other legislative body of said city and shall bear interest not exceeding eight per centum per annum, which interest shall be payable annually, or semi-annually, as may be provided by resolution or ordinance, and each bond shall have attached thereto interest coupons for each interest payment.

Such bonds shall be in such denominations as shall be provided in the resolution or ordinance authorizing their issuance and shall be numbered from one upwards, consecutively, and each bond and coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: Provided, however, that said coupons may in lieu of being so signed have printed thereon a facsimile of the signature of said officers and each bond shall have the seal of such city affixed thereto and shall refer to the improvement to pay for which the same shall be issued and to the ordinance authorizing the same. Each bond shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise. Such bonds shall not be issued in any amount in excess of the cost and expense of the improvement. [L. '15, p. 453, § 11.]

§ 9264. [7814b.] Sale—Application of Proceeds.

The bonds issued under the provisions of this act or any portion thereof may be sold by any authorized officer or officers of the city at not less than their par value and accrued interest, and the proceeds thereof shall be applied in payment of the awards, interest and costs of the improvement. [L. '15, p. 453, § 12.]

§ 9265. [7814c.] Payment of Assessment in Installments—Application.

In all cases where any city shall issue bonds as provided for in this act, the whole or any portion of the separate assessments for any such improvement, may be paid during the thirty (30) day period provided for in section 9266, and thereafter the sum remaining unpaid may be paid in equal annual installments; the number of which installments shall be less by two than the number of years which the bonds issued to pay for the improvements may run, with interest upon the whole unpaid sum at the bond rate, and each year thereafter one of such installments, together with the interest due thereon and on all installments thereafter to become due, shall be collected in the same manner as shall be provided by law and the resolutions and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued.

In all cases of improvements authorized in this act, where, at the time this act shall become effective, the notice by the city treasurer of the assessment for such improvement shall not have been published, the city council or other legislative body of such city may by ordinance or resolution provide for the issuance and sale of bonds for such improvement and for the payment of such assessments in installments. [L. '15, p. 454, § 13.]

§ 9266. [7814d.] Notice of Roll—Installments—Payment—Delinquency.

Whenever the assessment for any such improvement shall be payable in installments, the owner of any lot, tract or parcel of land or other property charged with any such assessment may pay such assessment or any portion thereof, without interest, within thirty (30) days after such notice of such assessment.

The city treasurer shall, as soon as the certified copy of the assessment-roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two consecutive daily or two consecutive weekly issues, that the said roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time within thirty (30) days from the date of the first publication of said notice without penalty, interest or costs, and the unpaid balance, if any, may be paid in equal annual installments, or any such assessment may be paid at any time after the first thirty (30) days following the date of the first publication of such notice by paying the entire unpaid portion thereof with all penalties and costs attached, together with all interest thereon to the date of delinquency of the first installment thereof next falling due.

Such notice shall further state that the first installment of such assessment shall become due and payable during the thirty (30) day period succeeding a date one (1) year after the date of first publication of such notice, and annually thereafter each succeeding installment shall become due and payable in like manner.

If the whole or any portion of any assessment remains unpaid after the first thirty (30) day period herein provided for, interest upon the whole unpaid sum shall be charged at the bond rate, and each year thereafter one (1) of said installments, together with interest due upon the whole of the unpaid balance shall be collected.

Any installment not paid prior to the expiration of the thirty (30) day period during which such installment is due and payable, shall thereupon become delinquent. All delinquent installments shall, until paid, be subject to a charge for interest at the bond rate, and to an additional charge of five per cent (5%) penalty levied upon both principal and interest due on such installment or installments.

The bonds herein provided for shall not be issued prior to twenty (20) days after the expiration of the thirty (30) days first above mentioned, but may be issued at any time thereafter. In all cases where any sum is paid as herein provided, the same shall be paid to the city treasurer, or to the officer whose duty it is to collect said assessments, and all sums so paid shall be applied solely to the payment of the awards, interest and costs of such improvements or the redemption of the bonds issued therefor.

In case any city has no official newspaper any publication required under the provisions of this act may be made in any newspaper of general circulation published therein, or in case there be no such newspaper, then in a newspaper published in the county in which such city is located and of general circulation in such city. [L. '15, p. 454, § 14.]

§ 9267. [7814e.] Right of Bondholders to Enforce Collection.

If the city shall fail, neglect or refuse to pay said bonds or to promptly collect any such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall in addition to the principal of such bonds and interest thereon, recover five per centum of such sum, together with the costs of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [L. '15, p. 456, § 15.]

§ 9268. [7814f.] Remedy of Bondholder Confined to Assessments.

Neither the holder nor owner of any bond issued under the authority of this act shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his remedy in case of non-payment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each bond so issued. [L. '15, p. 456, § 16.]

§ 9269. [7814g.] Exchange of Bonds.

Whenever any city has heretofore issued bonds for the purpose of paying the awards, interest and costs of local improvements herein authorized, such city may, with the consent of the holders of such bonds, exchange for them bonds authorized by this act. [L. '15, p. 457, § 17.]

§ 9270. [7814h.] Payment of Bond Interest—Calls—Notice.

The city treasurer shall pay the interest on the bonds authorized to be issued by this act out of the respective local improvement funds from

which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay said bonds. Such bonds shall be called in and paid in their numerical order, commencing with number 1. Such call shall be made by publication in the city official newspaper in its first publication following the delinquency of the installment of the assessment or as soon thereafter as is practicable, and shall state that bonds No. — (giving the serial numbers of the bonds called) will be paid on the day the next interest coupons on said bonds shall become due, and interest on said bonds shall cease upon such date: Provided, that in any city or town not having an official newspaper, such publication may be made in any newspaper of general circulation published therein, or in case there be no such newspaper, then in a newspaper published in the county in which such city or town is located and of general circulation in such city or town. [L. '15, p. 457, § 18.]

§ 9271. [7814i.] Partial Invalidity.

An adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof. [L. '15, p. 458, § 19.]

§ 9272. [7814j.] "City" Defined.

The term "city," when used in this act, means and includes every city and town and each unclassified city and town in the state of Washington. [L. '15, p. 458, § 20.]

"This act": the law of 1915, the title to which indicates that it is merely amendatory of this chapter (Laws of 1907).

"And town," see notes to § 9277, *infra*.

§ 9273. [7815.] Regrade Assessments.

If any street, avenue or alley, or the right to use and control the same for purposes of public travel, shall belong to any city and such city shall establish a grade therefor, which grade requires any cut or fill, damaging abutting property, the damages to arise from the making of such grade may be ascertained in the manner provided in this act, but such city may provide that the compensation to be made for such damage, together with the accruing costs, shall be added to the cost of the labor and material necessary for the grading thereof, and shall be paid by assessment upon the property within the local assessment district defined by law or the charter or ordinances of such city in the same manner and to the same extent as other expenses of such improvement are assessed and collected. In such cases it shall not be necessary to procure the appointment of commissioners to take the other proceedings herein provided for making such assessments, but all the proceedings for the assessment and collection of such damages and costs, shall, if so ordained by such city, be governed by the charter provisions, law or ordinances in force in such city for the assessment and collection of the costs of such improvements upon property locally benefited thereby: Provided, however, that this

section shall not apply to the original grading of such street, avenue or alley. [L. '09, p. 151, § 1. Cf. L. '93, p. 207, § 47; L. '05, p. 101, § 47; L. '07, p. 336, § 48.]

See *infra*, § 9333, damages from change of grade.

Cited in 43 Wash. 631, 632; 57 Wash. 51, 52, 56; 66 Wash. 271, 274; 75 Wash. 145; 77 Wash. 269.

Regrade, Damages from: See Remington's Digest, Mun. Corp., § 185, and cases cited.

§ 9274. [7816.] Proceedings Discontinued.

At any time within six months from the date of rendition of the last judgment awarding compensation for any such improvement in the superior court, or if any appeal be taken, then within two months after the final determination of the appeal in the supreme court, any such city may discontinue the proceedings by ordinance passed for that purpose before making payment or proceeding with the improvement by paying or depositing in court all taxable costs incurred by any parties to the proceedings up to the time of such discontinuance. If any such improvement be discontinued, no new proceedings shall be undertaken therefor until the expiration of one year from the date of such discontinuance. [L. '15, p. 458, § 21. Cf. L. '07, p. 337, § 49; L. '93, p. 208, § 48; L. '05, p. 101, § 48.]

Cited in 34 Wash. 355; 72 Wash. 395; 73 Wash. 303, 696, 697; 74 Wash. 134; 93 Wash. 477.

Where a city has condemned land to be paid for by special assessments, and has not abandoned the proceeding within the time limited by this section, the property owner is entitled to receive a warrant in satisfaction of the compensation awarded without waiting for the collection of the assessments, although the city has not taken possession of the property; since the appropriation is complete when the time for abandonment has expired: State

ex rel. Murray v. Herdlick, 73 Wash. 301, 131 Pac. 1139.

An abandonment and discontinuance, at first decided upon, is conclusively negatived where the city afterward, within the two months, in effect withdrew the discontinuance and paid the judgments in full and the defendants in condemnation accepted the payments; since the city thereby acquired the property with the consent of the defendants in condemnation and the defendants in the special proceeding cannot object thereto: *Spokane v. Pittsburg Land & Imp. Co.*, 73 Wash. 693, 132 Pac. 633.

§ 9275. [7817.] May Advance from General Fund.

If any city or town shall desire to take possession of any property or do any damage or proceed with any improvement, the compensation for which is to be paid for in whole or in part by the proceeds of special assessment under this act, it may advance from its general funds, or any moneys available for the purpose, the amount of the assessments aforesaid, and pay the same to the owner or into court, as herein provided, reimbursing itself for moneys so advanced from the special assessments aforesaid. If there be no funds available for the purpose, such city may contract indebtedness for the purpose of raising funds therefor, which indebtedness shall be contracted and such proceedings taken therefor as is provided by law for indebtedness contracted for other internal improvements. [L. '07, p. 337, § 50. Cf. L. '93, p. 208, § 49; L. '05, p. 102, § 49.]

"This act": See note to § 9216.

Cited in 50 Wash. 684, 685; 73 Wash. 302; 82 Wash. 245.

§ 9276. [7818.] Waiver of Jury—Procedure—Appeals—Precedence.

In any proceedings under this act wherein a trial by jury is provided for, the jury may be waived as in other civil cases in courts of record in the manner prescribed by law, and the matter may be heard and determined without the intervention of a jury. Whenever an attempt is made to take private property, for a use alleged to be public under authority of this act, the question whether the contemplated use be really public shall be a judicial question and shall be determined as such by the court before inquiry is had into the question of compensation to be made. When a jury is required for the determination of any matter under this act, such jury may be the same jury summoned for the trial of ordinary civil actions before the court, or the court may, in its discretion, issue a venire to the sheriff to summon as jurors such number of qualified persons as the court shall deem sufficient. Except as herein otherwise provided, the practice and procedure under this act in the superior court and in relation to the taking of appeals and prosecution thereof, shall be the same as in other civil actions, but all appeals must be taken within thirty days from the date of rendition of the judgment appealed from. Proceedings under this act shall have precedence of all cases in court except criminal cases. [L. '07, p. 338, § 51. Cf. L. '93, p. 208, § 50; L. '05, p. 102, § 50.]

"This act": See note to § 9216.

Cited in 54 Wash. 293, 461, 463.

An appeal from an order setting aside a verdict and judgment and dismissing condemnation proceedings, on motion of the plaintiff, is governed by this section,

and the general act allowing appeals from orders vacating a judgment within ninety days has no application: *Tacoma v. Birmingham Co.*, 50 Wash. 683, 97 Pac. 971.

§ 9277. [7819.] "Person," "City" and "Town," Defined.

Whenever the word "person" is used in this act the same shall be construed to include any company, corporation or association, the state or any county therein and the words "city" or "town" wherever used shall be construed to be either. [L. '07, p. 338, § 52. Cf. L. '93, p. 209, § 51; L. '05, p. 103, § 51.]

"City" defined: See *supra*, § 9272.

"Or town": The title of this act restricts its operation to cities of the first, second and third classes, and having a population of over fifteen hundred inhabitants.

"This act": See note to § 9216.

§ 9278. [7820.] Compensation for Property Taken or Damaged.

If any city has heretofore taken or shall hereafter take possession of any land or other property, or has damaged or shall hereafter damage the same for any of the public purposes mentioned in this act, or for any other purpose within the authority of such city or town, without having made just compensation therefor, such city or town may cause such compensation to be ascertained and paid to the persons entitled thereto by proceedings taken in accordance with the provisions of this act, and the payment of such compensation and costs as shall be adjudged in favor of the persons entitled thereto in such proceedings shall be a defense to any

other action for the taking or damaging of such property. [L. '07, p. 339, § 53. Cf. L. '93, p. 209, § 52; L. '05, p. 103, § 52.]

"This act": See note to § 9216.

Cited in 73 Wash. 235; 74 Wash. 108;
75 Wash. 382; 86 Wash. 8.

In General: See Remington's Digest,
Em. Dom., §§ 48—100, and cases cited.

§ 9279. [7821.] Construction as to Cities of Second Class.

In so far as this act relates to cities of the second class, this act shall not be deemed to be exclusive or as repealing or superseding any existing law relative to such cities, covering any subject covered by this act, but as to such cities, this act shall be construed as conferring additional powers and additional remedies, to those now provided by law. [L. '07, p. 340, § 56.]

"This act": See note to § 9216.

§ 9280. [7822.] Cities of Adjoining States—Right of Eminent Domain.

Any municipal corporation of any state adjoining the state of Washington may acquire title to any land or water right within the state of Washington, by purchase or condemnation, which lies within any watershed from which said municipal corporation obtains or desires to obtain its water supply. [L. '09, p. 18, § 1.]

§ 9281. [7823.] Pollution of Water Supply.

Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding five hundred dollars. [L. '09, p. 18, § 2.]

See supra, §§ 2542, 2543, pollution of water supply.

See infra, § 9475, nuisance by pollution of water supply.

CHAPTER XVI.

POLICE MATRONS.

§ 9282. [7824.] Police Matrons in Cities of Ten Thousand Inhabitants.

There shall be annexed to the police force of each city in this state having a population of not less than ten thousand inhabitants one or more police matrons who, subject to the control of the chief of police or other proper officer, shall have the immediate care of all females under arrest and while detained in the city prison until they are finally discharged therefrom. [L. '93, p. 24, § 1.]

§ 9283. [7825.] Police to Assist.

Any person on the police force or, in their absence, any other person present, must aid and assist the matron when from necessity she may require it. [L. '93, p. 25, § 2.]

§ 9284. [7826.] Separate Apartment Required.

For the purpose of effecting the main object of this act, no female under arrest shall be confined in the same cell or apartment of the city jail or prison, with any man whatever. [L. '93, p. 25, § 3.]

"This act" embraces §§ 9282—9287.

§ 9285. [7827.] How Appointed.

No person shall be appointed to the office of police matron unless suitable for the position, and recommended therefor in writing by not less than twenty women in good standing, and residents of the city where the appointment is made. [L. '93, p. 25, § 4.]

§ 9286. [7828.] Term of Office.

A police matron shall hold office for a period of four years, or, until resignation, removal from the city or for cause; and for cause she may be removed at any time by written order clearly stating the cause for her removal, when another matron must be appointed to fill the vacancy without unnecessary delay. [L. '93, p. 25, § 5.]

§ 9287. [7829.] Compensation.

A police matron must be paid such compensation for her services as shall be fixed by the city council, and at such time as may be appointed for the payment of policemen. [L. '93, p. 25, § 6.]

CHAPTER XVII.

PLATS, STREETS, ADDITIONS AND PARKS.

§ 9288. [7831.] Plats to be Recorded.

Any person or persons who may hereafter lay off any town within this state shall, previous to the sale of any lots within such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a plat of said town, with the public grounds (if any there be), streets, lanes, and alleys, with their respective widths properly marked, and the lots regularly numbered and the size stated on said plat. [Cf. L. '58, p. 27, and L. '63, p. 431; Cd. '81, § 2328; 1 H. C., § 743.]

Cited in 2 Wash. 400; 45 Wash. 384; 73 Wash. 330.

Plats by Land Owners: See Remington's Digest, Mun. Corp., § 345; Burmeister v. Howard, 1 W. T. 207; Seattle v. Hill, 23 Wash. 92, 62 Pac. 446; Hillman v. Seattle, 33 Wash. 14, 73 Pac. 891; Brazell v. Seattle, 55 Wash. 180, 104 Pac. 155.

The provisions for statutory dedication

do not preclude a common-law dedication without the recording of any plat, two things only being necessary—the intention of the owner and an expressed or implied acceptance by the public: Seattle v. Hill, 23 Wash. 92, 62 Pac. 446.

This section does not apply to one who agrees to convey a lot in an unrecorded plat laid off by his predecessors: Opsjon v. Engebo, 73 Wash. 324, 131 Pac. 1146.

§ 9289. [7832.] Additions to be Recorded—Effect of.

Every person hereinafter [hereafter] laying off any lots in addition to any town shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the

original plat of said town, and thereafter the same shall be considered an addition thereto. [Cf. L. '58, p. 26, § 3; L. '63, p. 431, § 3; Cd. '81, § 2330; 1 H. C., § 744.]

Cited in 45 Wash. 384.

§ 9290. [7833.] Plats to be Acknowledged.

Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith. In all cases where any person or persons, corporation or corporations shall desire to file a plat, map, subdivision or replat of any property or shall desire to vacate the whole or any portion of any existing plat, map, subdivision or replat, such person or persons, corporation or corporations must, at the time of filing the same for record or of filing a petition for vacation thereof, file therewith a certificate from the proper officer or officers who may be in charge of the collection of taxes for which the property affected may be liable at that date, that all taxes and assessments which have been levied and become chargeable against such property at such date have been duly paid, satisfied and discharged. [Cf. L. '58, p. 26, § 4; L. '63, p. 431, § 4; Cd. '81, § 2331; 1 H. C., § 745; L. '93, p. 419, § 1.]

Cited in 33 Wash. 20; 45 Wash. 384.

§ 9291. [7834.] Filing Plats—Taxes.

Any person filing a plat subsequent to March 1st, in any year and prior to the date of the collection of taxes, shall deposit with the county treasurer a sum equal to an increase of twenty-five per cent of the amount of the tax for the previous year on the property platted. The treasurer's receipt for said amount shall be taken by the auditor as evidence of the payment of the tax. The treasurer shall appropriate so much of said deposit as will pay the taxes on the said property when the tax-rolls are placed in his hands for collection, and in case the sum deposited is in excess of the amount necessary for the payment of the said taxes, the treasurer shall return, to the party depositing, the amount of said excess, taking his receipt therefor, which receipt shall be accepted for its face value on the treasurer's quarterly settlement with the county auditor. [L. '93, p. 419, § 2; L. '07, p. 59, § 1; L. '09, p. 704, § 1.]

Cited in 33 Wash. 20.

§ 9292. [7835.] Streets are Public Highways.

Whenever any city or town has been surveyed and platted, and a plat thereof showing the roads, streets, and alleys has been filed in the office of the auditor of the county in which such city or town is located, such plat shall be deemed the official plat of such city or town, and all roads, streets, and alleys in such city or town, as shown by such plat, [shall] be and the same are declared public highways: Providing, that

nothing herein shall apply to any part of a city or town that has been vacated according to law. [Cf. L. '77, p. 314, § 1; L. '71, p. 299, § 1; Cd. '81, § 3049. Cf. Cd. '81, § 2332; 1 H. C., § 746.]

See supra, § 9204, bicycle paths.

Cited in 2 Wash. 16; 12 Wash. 486; 29 Wash. 26; 43 Wash. 711; 45 Wash. 384.

Bros. Brewing Co., 29 Wash. 21, 69 Pac. 362.

The public control of streets and highways in this state does not amount to an ownership of the fee under this section and section 9310, infra, which declare the effect and purpose of dedication of city lots: Schwede v. Hemrich

The laws in force prior to this section did not expressly require any acceptance by the public of lands or additions dedicated to the public: Thonney v. Rice, 43 Wash. 708, 86 Pac. 713.

§ 9293. [7836.] Public Highways, Streets Over Tide Lands are.

All streets in any incorporated city in this state, extending from high tide into the navigable waters of the state, be and the same are hereby declared public highways. [L. '90, p. 733, § 1; 1 H. C., § 747.]

See Const., Art. XV, § 3, right to extend streets over tide lands.

§ 9294. [7837.] Control of, by Authorities.

All streets declared public highways under the provisions of this and the last preceding section shall be under the control of the corporative authorities of the respective cities. [L. '90, p. 733, § 2; 1 H. C., § 748.]

Cited in 29 Wash. 26; 66 Wash. 529.

§ 9295. [7838.] Streets Over Tide Lands Under Supervision of Cities.

All streets and alleys, which have been heretofore or may hereafter be established upon, or across tide and shore lands of the first class shall be under the supervision and control of the cities within whose corporate limits such tide and shore lands are situated, to the same extent as are all other streets and alleys of such cities, and all acts of supervision and control thereof by such cities hitherto within one year last past are hereby confirmed and declared valid to the same extent that they would be valid in the case of other streets and alleys of such cities. [L. '01, p. 346, § 1.]

Extension of Street Over Tide Lands:
See Remington's Digest, Mun. Corp., § 346; Columbia etc. R. Co. v. Seattle, 6 Wash. 332, 33 Pac. 824, 34 Pac. 725; Globe Mill Co. v. Bellingham Bay Imp. Co., 10 Wash. 458, 38 Pac. 1112; Seattle v. Columbia & P. S. R. Co., 6 Wash. 379, 33 Pac. 1048; Tacoma v. Titlow, 53 Wash. 217, 101 Pac. 827; Seattle & M. R. Co. v. State, 7 Wash. 150, 34 Pac. 551, 38 Am. St. Rep. 866, 22 L. R. A. 217; State

ex rel. McKenzie v. Forrest, 11 Wash. 227, 39 Pac. 684; State ex rel. Bartlett v. Forrest, 12 Wash. 483, 41 Pac. 194; Ilwaco v. Ilwaco R. & Nav. Co., 17 Wash. 652, 50 Pac. 572; State ex rel. Gatzert etc. Land Co. v. Bridges, 19 Wash. 428, 53 Pac. 547; West Seattle v. West Seattle Land & Imp. Co., 38 Wash. 359, 80 Pac. 549; Percival Application No. 92, In re, 91 Wash. 470, 157 Pac. 1082.

§ 9296. [7839.] Validation of Leases of Vacant Streets on Waterfront.

Whenever the council of any city or town has heretofore by resolution or ordinance, or either, or both, found that any street or streets, or specified portions thereof, upon the waterfront, within or in front of such city or town, are imaginary streets, existing only upon maps or plats, and that the same in the portions specified have never been opened for public travel or improved as public highways, and that

it will be for the best interest of such city or town, its trade or commerce, not to take possession of or improve any such street or specified portions thereof, and that the closing of such street or specified portions thereof for a period therein provided, and the occupancy of the space so closed by persons, or corporations, for the purpose of trade, commerce, navigation, transportation, manufactures, or other industries, will be without injury to any public or private interest, but will be of great benefit to the public and such community, and therein authorizing such occupancy for such purposes, for the period therein specified, such resolutions, ordinances, and the action of the council of such city or town as therein determined and set forth are hereby validated: Provided, that this shall not be construed as validating any such lease for a longer term than thirty years from the date of the commencement of the term mentioned in such lease: And provided further, that this section shall not apply to cities of the first class. [L. '99, p. 84, § 1.]

§ 9297. [7840.] Proceeding to Vacate Streets, etc., by Abutting Owners.

Any person or body corporate in any city owning an interest in any real estate abutting upon any street or alley who may desire to vacate such street or alley, or any part thereof may petition the city council of such city or town to make vacation, giving a description of the property to be vacated, which petition shall be filed with the city clerk of said city or town; and, (if said petition shall be signed by the owners of more than two-thirds ($\frac{2}{3}$) of the private property abutting upon the part of such street or alley sought to be vacated) said city council shall, by resolution, fix a time when said petition shall be heard and determined, which time shall not be more than sixty (60) days nor less than twenty (20) days after the date of the passage of such resolution and upon the passage of such resolution it shall be the duty of the city or town clerk to give twenty (20) days' notice of the pendency of said petition by a written or printed notice set up in three (3) of the most public places in said city or town and a like notice in a conspicuous place on the street or alley sought to be vacated, which said notice shall contain a statement that a petition has been filed to vacate said street or alley which shall be described in said notice, together with a statement of the time and place fixed for the hearing of said petition. [L. '01, p. 175, § 1.]

Cited in 41 Wash. 303; 55 Wash. 576; 62 Wash. 110; 67 Wash. 95, 150, 279; 71 Wash. 270, 273.

Vacation or Abandonment of Streets:
See Remington's Digest, Mun. Corp., § 349; Burmeister v. Howard, 1 W. T. 20; Fouts v. New Whatcom, 14 Wash. 49, 44 Pac. 111; Kakeldy v. Columbia & P. S.

R. Co., 37 Wash. 675, 80 Pac. 205; Ponischil v. Hoquiam Sash etc. Co., 41 Wash. 303, 83 Pac. 316; Mottman v. Olympia, 45 Wash. 361, 88 Pac. 579; Brazell v. Seattle, 55 Wash. 180, 104 Pac. 155; Smith v. Centralia, 55 Wash. 573, 104 Pac. 797; Rowe v. James, 71 Wash. 267, 128 Pac. 539.

§ 9298. [7841.] Vacation by Ordinance.

At the time appointed for the hearing of said petition or at such time as the time may be adjourned to by the city council, the same shall

be heard, and if the council shall determine to grant said petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley or any part thereof. [L. '01, p. 176, § 2.]

§ 9299. [7842.] Vacated Portion Goes to Abutting Property.

When any street, alley or public way in any incorporated city or town in this state has heretofore been or may hereafter be vacated by the council or legislative body of said city or town, the property within the limits of any such street, alley or public way so vacated shall belong to the abutting property owners, one-half to each, unless within six months after the taking effect of this act, any person or corporation, who may feel himself or itself aggrieved by such a division, may commence an action in the proper courts of this state to determine the title to any such street, alley or public way so vacated. [L. '01, p. 176, § 3.]

"This act" refers to §§ 9297—9300.

Cited in 67 Wash. 150; 74 Wash. 465; 102 Wash. 339.

Ownership on Vacation: See Remington's Digest, Mun. Corp., § 350; Burmeister v. Howard, 1 W. T. 207; Mottman v. Olympia, 45 Wash. 361, 88 Pac. 579; Norton v. Gross, 52 Wash. 341, 100 Pac. 734; Rowe v. James, 71 Wash. 267,

128 Pac. 539; Hagen v. Bolcom Mills, 74 Wash. 462, 133 Pac. 1000, 134 Pac. 1051; Brokaw v. Town of Stanwood, 79 Wash. 322, 140 Pac. 358; Bradley v. Spokane & Inland Empire R. Co., 79 Wash. 455, 140 Pac. 688, L. R. A. 1917C, 225; State ex rel. Patterson v. Superior Court, 102 Wash. 331, 173 Pac. 186.

§ 9300. [7843.] Vested Rights not Affected.

No vested rights shall be affected by the provisions of this act. [L. '01, p. 176, § 4.]

"Act" in this section, refers to §§ 9297—9300.

Cited in 63 Wash. 110; 71 Wash. 270; 74 Wash. 466.

§ 9301. [7844.] Lots, etc., in Unincorporated Towns, Proceedings to Vacate.

Any person or body corporate interested in any town in this state not incorporated, who may desire to vacate any lot, street, alley, common, or any part thereof, or may desire to vacate any public square, or part thereof, in any such town, it shall be lawful for any such person or corporation to petition the board of county commissioners for the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, which petition shall be filed with the county auditor twenty days previous to the sitting of said court, and notice of the pendency of said petition shall be given for the same space of time, by written or printed notices set up in three of the most public places in said town, containing a description of the property to be vacated. [L. '58, p. 27, § 1; L. '59, p. 409, § 1; L. '63, p. 432, § 1; Cd. '81, § 2333; 1 H. C., § 749.]

See notes to §§ 9297, 9299.

Cited in 41 Wash. 265; 71 Wash. 270; 92 Wash. 634.

§ 9302. [7845.] Vacation—Conditions.

Said court, if satisfied that the aforesaid notice has been given, may, in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable and for the public good. [L. '58, p. 27, § 2; L. '63, p. 432, § 2; L. '69, p. 410, § 2; Cd. '81, § 2334; 1 H. C., § 750.]

§ 9303. [7846.] Effect of Vacation.

The part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley; and all right or title thereto shall vest in the person or persons owning the property on each side thereof, in equal proportions: Provided, the lots or grounds so bordering on such street or alley have been sold by the original owner or owners of the soil; if, however, said original owner or owners possess such title to the lots or ground bordering said street or alley on one side only, the title to the same shall vest in the said owner or owners if the said court shall judge the same to be just and proper. [L. '58, p. 27, § 3; L. '63, p. 433, § 3; L. '69, p. 410, § 3; Cd. '81, § 2335; 1 H. C., § 751.]

Cited in 29 Wash. 26; 52 Wash. 344; 71 Wash. 270, 272; 74 Wash. 464, 466, 473; 79 Wash. 461.

§ 9304. [7847.] Proceedings to Vacate in Incorporated Towns.

In cases where any person interested in any incorporated town in this state may desire to vacate any street, alley, lot, or common, or any part thereof, it shall be lawful for such person to petition the trustees in like manner as persons interested in towns not incorporated are authorized to petition the board of county commissioners; and the same proceedings shall be had thereon before such trustees, or other body corporate having jurisdiction, as are authorized to be had before the board of county commissioners; and such trustees or other corporate body may determine on such application, under the same restrictions and limitations as are contained in the foregoing provisions. [L. '58, p. 27, § 4; L. '63, p. 433, § 4; L. '69, p. 410, § 4; Cd. '81, § 2336; 1 H. C., § 752.]

Vacation of plats: See *infra*, § 9311 et seq.

Cited in 29 Wash. 26; 41 Wash. 264; 71 Wash. 270.

§ 9305. [7848.] Unimproved Towns or Additions, How Vacated.

In all cases where any person or persons have laid out or shall hereafter lay out a town, or any addition to any town, and such town or addition does not improve, and such person or persons shall be the legal owner or owners of all lots contained in such town or addition, such person or persons, or any other party or parties, who shall become the legal owner or owners thereof, may have such town or addition, or any part thereof, vacated in like manner as is hereinbefore provided for the vacation of lots, streets, and alleys. [L. '58, p. 28, § 5; L. '63, p. 433, § 5; L. '69, p. 411, § 5; Cd. '81, § 2337; 1 H. C., § 753.]

Cited in 71 Wash. 317.

§ 9306. [7849.] Defective Plats Legalized.

All city or town plats, or any addition or additions thereto, heretofore made and recorded in the county auditor's office of any county in the state of Washington, showing lots, blocks, streets, alleys, or public grounds, shall be conclusive evidence of the location and size of the lots, blocks, and public grounds, and the location and width of each and every street or alley marked, laid down, or appearing on such plat, and that all the right, title, interest, or estate which the person or persons making or recording such plat, or causing the same to be made or recorded, had at the time of making or recording such plat in or to such streets, alleys, or public grounds, was thereby dedicated to public use, whether the same was made, executed, or acknowledged in accordance with the provisions of the laws of this state in force at the time of making the same, or not. [Cd. '81, § 2338; 1 H. C., § 754.]

§ 9307. [7850.] Copy of Plat or Addition—Evidence.

A copy of any city or town plat or addition thereto recorded in the manner provided for in the preceding section, certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state with like effect as the original. [Cd. '81, § 2339; 1 H. C., § 755.]

Cited in 5 Wash. 616.

§ 9308. [7851.] Power to Correct Defects—Effect of.

Whenever the recorded plat of any city, or addition thereto, does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or addition, the city council of the city in which the land so platted is located is hereby authorized and empowered by ordinance, and the action of its proper officers, to cause a new and correct survey and plat of such city or addition to be made and recorded in the office of the county auditor of the county in which such city or addition is located, which corrected plat shall follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the officer or surveyor making the same shall be indorsed thereon, referring to the original plat corrected thereby, and the deficit [defect] existing therein, and corrected by such new survey and plat; and the ordinance authorizing the making of such plat shall be recorded in the office of the county auditor of said county, and said certificate shall show where said ordinance is recorded; and such plat, when so made and recorded, or a copy thereof certified as provided in section 9307, shall be admissible in evidence in all the courts of this state. [Cd. '81, § 2340; 1 H. C., § 756.]

§ 9309. [7852.] Incorporated Cities to Regulate Surveys and Plats.

All incorporated cities in the state of Washington are hereby authorized and empowered to regulate and prescribe the manner and form of

making any future survey or plat of lands within their respective limits, and enforce such regulations by a fine of not exceeding one hundred dollars, to be recovered by and in the name of such city, or imprisonment not exceeding twenty days for each violation, of any ordinance regulating such survey and platting: Provided, that nothing in this chapter shall be construed so as to apply to additions to towns in which no lots have been sold. [Cd. '81, § 2341; 1 H. C., § 757.]

§ 9310. [7853.] Effect of Donation Where Marked on Plat.

Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees, for his, her, or their use, for the purposes intended by the donor or donors, grantor or grantors, as aforesaid. [Cd. '81, § 2329; 1 H. C., § 758.]

Cited in 19 Wash. 532; 29 Wash. 26;
43 Wash. 711; 45 Wash. 384.

In General: See Remington's Digest,
Dedication, §§ 7, 9.

§ 9311. [7854.] Changes in Town Sites, Plats, etc., Procedure.

Whenever three-fourths in number and area of the owners of any town site, city plat or plats, addition or additions, or part thereof, shall be desirous of altering the plat or plats, replatting or vacating the same, or any part thereof, they may prepare a plat or plats, showing such alterations or replat, drafted upon a copy of the existing plat or plats, or that portion desired to be altered, replatted or vacated, and file the same with the clerk of the board of county commissioners, or city council having jurisdiction of the establishment or vacation and control of the streets to be affected, accompanied with a petition for the change desired. [L. '03, p. 139, § 1.]

Cited in 55 Wash. 185.

The city council can only approve or reject the petition in its entirety, and an order altering the proposed replat is void; the orders required by justice, etc., referring to the necessary assessments and awards, and not to modifications of

the replat: *Brazell v. Seattle*, 55 Wash. 180, 104 Pac. 155.

Under this section the council has no power to modify the proposed replat, but must approve or reject it in its entirety, and an order approving part of the vacation petitioned for is void: *Brazell v. Seattle*, 55 Wash. 180, 104 Pac. 155.

§ 9312. [7855.] Notice and Time of Hearing.

Thereupon and upon the payment of the cost thereof the said clerk shall fix a time for the hearing of said petition, which time shall not be less than thirty nor more than sixty days after the filing of said petition, and shall cause a notice to be issued under his hand and the seal of said county or city, stating by whom and when said petition was filed, the object thereof and when and where the same will be heard. Said notice shall also describe the property sought to be altered, replatted or vacated. [L. '03, p. 139, § 2.]

Cited in 55 Wash. 185.

§ 9313. [7856.] Service—Same as Civil Action.

Said clerk shall cause said notice to be served, as in the manner provided for service of summons in civil actions, upon all the owners of property not joining in said petition as shown by the records in the auditor's office of the county wherein the town site, plat or plats, addition or additions may be located. [L. '03, p. 139, § 3.]

Cited in 55 Wash. 185.

§ 9314. [7857.] Jurisdiction of Commissioners or City Council.

Thereafter such board of county commissioners, or city council shall have full and complete jurisdiction to inquire into and determine the merits of the changes or relief prayed for, assess damages or benefits, award the same and make such order in the premises as justice and the public welfare may require. [L. '03, p. 140, § 4.]

Cited in 55 Wash. 185, 187.

§ 9315. [7858.] Assessment District—Damages and Benefits.

The whole of the land embraced in the plat or plats proposed to be altered, replatted or vacated shall be and constitute an assessment district, and damages shall be assessed and benefits awarded as now provided by law for the establishment, alteration or vacation of streets, alleys and roads by said board of county commissioners and city council. [L. '03, p. 140, § 5.]

§ 9316. [7859.] Plats Filed—Order Filed, When Vacation Merely.

Any plat or replat so adjudicated, adjusted and approved, showing the lines of the original and adjudicated plat, shall be filed and recorded with the auditor of the county where the property is situated, and shall thereafter be the lawful plat and substitute for all former plats: Provided, however, that should the said town site, city plat or plats, addition or additions, or parts thereof, be vacated and not otherwise altered or replatted, it shall only be necessary to file with the county auditor the order, resolution or ordinance vacating the same, and the auditor shall thereupon note upon the original plat the part thereof so vacated. [L. '03, p. 140, § 6; L. '09, p. 518, § 1.]

§ 9317. [7860.] Appeals to Superior Court.

Any owners of any such portion of the property affected by the actual award or final judgment of such board of county commissioners or city council may appeal to the superior court having jurisdiction of appeals from justice of the peace in the locus in quo. Such appeals shall be taken in the same manner and form as appeals from justices of the peace. [L. '03, p. 140, §§ 7, 8.]

§ 9318. [7861.] Act Concurrent.

Nothing in this act contained shall in any way change, limit or affect the power now vested in a board of county commissioners or city council to vacate streets and alleys and parts of streets and alleys. [L. '03, p. 140, § 9.]

"Act" refers to §§ 9311—9318.

§ 9319. Parks, Parkways, Bathing Beaches and Public Camps.

Any city in this state acting through its city council, or its board of park commissioners when authorized by charter or ordinance, and any separately organized park district acting through its board of park commissioners or other governing officers shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city or park district or any number of such public organizations to acquire any land within this state for parks, parkway, bathing beaches, roads or public camp purposes and roads leading from said park, parkway, bathing beaches, roads or public camp to nearby highways by donation, purchase or condemnation, and to care for, control, supervise, improve, operate and maintain parks, parkways, bathing beaches, roads and public camps upon any such lands, including the power to enact and enforce such police regulations, not inconsistent with the Constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. [L. '21, p. 321, § 1.]

§ 9320. Contracts for Co-operation.

Any city or park district shall have power to enter into any contract in writing with any organization or organizations referred to in this act for the purpose of exercising any power granted by this act. [L. '21, p. 321, § 2.]

§ 9321. Rules and Regulations Governing Camps.

Any city or separately organized park district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp or camps anywhere within this state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [L. '21, p. 322, § 3.]

§ 9322. Scope of Act.

This act shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [L. '21, p. 322, § 4.]

CHAPTER XVIII.

BRIDGES.

§ 9323. [7862.] Erection Authorized.

It shall be lawful for cities and incorporated towns, and they are hereby authorized, by their respective legislative bodies to erect and maintain drawbridges across navigable streams that flow through or penetrate the boundaries of such cities or towns, when the public necessity requires it, or to grant franchises to persons or corporations to erect the same and charge toll thereon. [L. '90, p. 54, § 1; 1 H. C., § 737.]

See supra, §§ 8966, 9034, 9175, power to construct.

See infra, § 11235, limit of tax levy for.

Cited in 66 Wash. 288.

Bridges, Authority to Build Over Navi-

gable Streams: See Westlake Avenue, In re, 66 Wash. 277, 119 Pac. 798.

§ 9324. [7863.] Width of Draw, How Determined—Appeal.

Whenever any common council of any city, or board of trustees of any incorporated town, desire to erect a drawbridge across any navigable stream on any street, or to grant the privilege so to do to any corporation or individual, under the provisions of this chapter, such boards of trustees or common council shall notify the board of commissioners of the county in which such city or incorporated town is situated of such purpose, and the precise point where such bridge is proposed to be located. Said board of commissioners shall, within ten days from the receipt of the notice, if in session, and if not in session, then within five days after the first day of the next regular or special session, designate the width of the draw to be made in such bridge, and the length of span necessary to permit the free flow of water: Provided, that in case any person or body shall deem itself or themselves aggrieved by the determination of the matter by said board, an appeal shall be allowed to the superior court of the county, which court shall have power and jurisdiction to hear and determine the matter upon such further notice and on such testimony as it shall direct to be produced. [L. '90, p. 54, § 2; 1 H. C., § 738.]

§ 9325. [7864.] License Tax—Franchise, Toll and Rates.

Before any franchise to build any bridge across any such navigable stream shall be granted by any such board of trustees or common council, they shall fix a license tax, not to exceed ten per cent of the tolls collected annually, and upon the completion of said bridge shall inspect the same, and if the same be found to comply in all respects with the specifications previously made, and to be safe and convenient for the public, they shall declare the same open as a toll bridge, and shall immediately fix the rates of toll thereof. [L. '90, p. 55, § 3; 1 H. C., § 739.]

§ 9326. [7865.] Renewal of License, Prerequisites to.

The owner or keeper of any toll bridges in any city or town shall, before the renewal of any license, report to the common council of the city, or the board of trustees of a town, under oath, the actual cost of construction and equipment of the toll bridge, the repairs and cost of maintaining the same during the preceding year, the amount of tax collected, and the estimated cash value of the bridge, exclusive of the franchise; and all funds arising from license tax shall be paid into the general fund of the city or town. [L. '90, p. 55, § 4; 1 H. C., § 740.]

Cited in 67 Wash. 150.

§ 9327. [7866.] Drawbridges—How to be Constructed.

All bridges constructed under the provisions of this chapter must be so constructed as not to obstruct navigation, and must have a draw or swing of sufficient space or span to permit the safe, convenient, and expeditious passage at all times of any steamer or vessel or raft which may navigate the stream or waters bridged. [L. '90, p. 55, § 5; 1 H. C., § 741.]

§ 9328. [7867.] Cities and Towns may Build and Maintain Toll Bridges, etc.

The cities and towns of this state may build and maintain toll bridges, and charge and collect tolls thereon, and to that end may provide a system and elect or appoint persons to operate the same, or the said bridges may be made free, as they may elect. [L. '90, p. 55, § 6; 1 H. C., § 742.]

Cited in 66 Wash. 288; 74 Wash. 652.

§ 9329. [7868.] Right to Build Bridges.

Counties, cities, towns and other municipalities shall have, and are hereby given the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tide or shore lands of the state or harbor areas adjacent thereto over which the projected line or lines of any highway will run: Provided, such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such highway. [L. '15, p. 48, § 1. Cf. L. '09, p. 605, § 1.]

Cited in 66 Wash. 288.

§ 9330. [7869.] Consent of Federal Government — Modifications — Improvements.

The location and plans of such structures shall be submitted to, and approved by, the commissioner of public lands of the state of Washington before construction is commenced: Provided, that in case the portion of such waterway at the place to be so crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, such location and plans shall also be submitted to, and approved by, the secretary of war and the chief of engineers of the United States before construction is commenced: And provided further, that when plans for any bridge or trestle have been approved by the commissioner of public lands, or the commissioner of public lands, the secretary of war and the chief of engineers aforesaid, it shall not be lawful to deviate from such plans either before or after the completion of such structure, unless the modifications of such plans have previously been submitted to and received the approval of, the commissioner of public lands, or the commissioner of public lands, the secretary of war and chief of engineers, as the case may be. Any structure hereby authorized and approved as aforesaid shall remain within the jurisdiction of the respective officer or officers approving the same, and shall be altered or changed from time to time at the expense of the municipality owning the highway or at the expense of the common carriers, at the time owning the road or roads using such structure, to meet the necessities of navigation and commerce in such manner as may be from time to time ordered by the respective officer or officers at such time having jurisdiction of the same, and such orders may be enforced by appropriate action at law or in equity at the suit of the state. [L. '09, p. 606, § 2.]

CHAPTER XIX.

RENEWAL OF SIDEWALKS.

§ 9331. [7872.] Renewal of Sidewalks—Abutting Property Liable—Procedure.

Whenever any street, lane, square, place or alley in any city of the first, second, third or fourth class or other cities and towns of equal population working under special charters, now or hereafter legally organized in this state shall have been improved by the construction of a sidewalk or sidewalks along either or both sides thereof, the duty, burden and expense or [of] maintenance, repair and renewal of such sidewalk or sidewalks shall devolve upon the property directly abutting upon that side of such street along which such sidewalk has been constructed as hereinafter provided. Whenever in the judgment of that officer or department of any such city who, or which is or shall be, charged with the inspection and care of the sidewalks along the public streets, lanes, squares, places and alleys in such city, the condition of any sidewalk is such as to render the same unfit or unsafe for purposes of public travel, the said officer or department shall thereupon serve a notice on the owner of the property immediately abutting upon said portion of said sidewalk of the condition thereof, instructing the said owner to clear, repair, or renew the said portion of the sidewalk. The notice provided for shall be deemed sufficiently served if delivered in person to the owner of the property or his authorized agent, or by leaving a copy of such notice at the home of the owner or authorized agent, or if the owner is a nonresident by mailing a copy to his last known address, or if the owner of the property be unknown or if his address be unknown then such notice shall be addressed to the general delivery office of the city wherein the improvement is to be made. Such notice shall specify a reasonable time within which such cleaning, repairs or renewal shall be executed by the said owner, and shall state that in case the said owner shall fail to do such cleaning or to make such repairs or renewal within the time therein specified then the said officer or department will proceed to clean said walk or to make such repairs or renewal forthwith, and will report to the city council at its next regular meeting or as soon thereafter as possible, the date to be definitely stated, an assessment-roll showing the lot or parcel of land immediately abutting on that portion of the sidewalk so improved, the cost of such improvement or repair and the name of the owner, if known, and that the council will hear any or all protests against the proposed assessment. The council shall at the time in such notice designated or at an adjourned time or times assess the cost of such work against said property in accordance with the benefits derived therefrom, which said charge shall become a lien upon said property and shall be collected by due process of law. For the purposes of this act all property having a frontage upon the sides or margin of any street shall be deemed to be abutting property and such property shall be chargeable, as provided by this act for all costs of maintenance, repairs or renewal of any form of sidewalk improvement between the said street margin and the roadway lying in

front of and adjacent to said property, and the term sidewalk, as intended for the purposes of this act, shall be taken to include any and all structures or forms of street improvement included in the space between the street margin and the roadway. [L. '05, p. 61, § 1.]

"Act," in this section, refers to §§ 9331, 9332.

§ 9332. [7873.] Scope of Powers Conferred.

Nothing in this act shall be construed to limit or repeal any existing powers of cities or towns with reference to the improvement or maintenance of sidewalks, streets, lanes, places, squares or alleys, but the power and authority herein granted is to be exercised concurrent with or in extension of the powers and authority now existing. The legislative authority of any city before exercising the powers and authority herein granted shall, by proper ordinance, provide for the application and enforcement of the same within the limitations herein specified. [L. '05, p. 62, § 2.]

"Act": See note to preceding section.

Cited in 70 Wash. 582.

CHAPTER XX.

DAMAGE CAUSED BY CHANGE OF GRADE.

§ 9333. [7874.] Provision for Payment of.

When the grade of any street or sidewalk in any city or incorporated village shall be established by the corporate authority of such city or village, and a building shall thereafter be constructed upon said street, no change shall be made in the grade of such street or sidewalk which shall require the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering shall be appraised and ascertained as is hereinafter provided. [L. '83, p. 63, § 1; 1 H. C., § 759.]

See supra, § 9273, damages for change of grade.

Cited in 10 Wash. 214; 83 Wash. 385, 387.

pel: Pratt v. Seattle, 111 Wash. 104, 189 Pac. 565.

Damages: See Remington's Digest, Mun. Corp., §§ 182—197, and cases cited. See, also:

§§ 190, 194, 197. Evidence—Admissibility—Removal of Lateral Support—Defenses: Blomskog, Erickson & Cotton v. Seattle, 107 Wash. 471, 182 Pac. 571.

—Payment of Condemnation Awards—Rights of Judgment Creditors—Estop-

Right to damages for change of grade where improvements made by abutting owners in reliance on established grade. **Ann. Cas.** 1916E, 371.

Joinder in petition for change of street grade as waiver of, or estoppel to claim, compensation for resulting damage: 20 **Ann. Cas.** 876.

§ 9334. [7875.] Appraisement of Damages.

In case the corporate authority of such city or village and the owner of such building shall be unable to agree upon the amount of such damages, such authority shall appoint three disinterested freeholders of such city or village to appraise such damages. The appraisers so appointed, after being duly sworn, shall appraise such damage and make two written reports thereof, signed by at least a majority of them, one

of which shall be delivered to the clerk of such city or village, to be immediately filed in his office, and the other to the owner of the building. [L. '83, p. 64, § 2; 1 H. C., § 760.]

Cited in 77 Wash. 682.

§ 9335. [7876.] Report to be Made, When.

Such report shall be made and delivered within ten days after the appointment of the appraisers. [L. '83, p. 64, § 4; 1 H. C., § 761.]

§ 9336. [7877.] Right of Appeal.

Within twenty days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the superior court, within the county in which such city or town is located, a copy of such report, certified by the clerk of such city or village, whereupon the clerk of the superior court shall cause the same to be entered on the trial docket. Such city or village shall be plaintiff, and the owner of the building shall be defendant; the question of damages shall be tried by a jury, or with the consent of the parties, by the court. [L. '83, p. 64, §§ 5, 6; 1 H. C., § 762.]

§ 9337. [7878.] Pleadings, of What to Consist.

The report of the appraisers shall be the complaint, and the defendant may file such pleadings as the court may allow. [L. '83, p. 64, § 7; 1 H. C., § 763.]

§ 9338. [7879.] Costs of Appeal—Payment of.

In case the owner of the building takes the appeal, and the damages are not increased, or in case the city or village takes the appeal, and the damages be decreased in the superior court, the costs shall be taxed to the defendant. In all other cases, and in case no appeal is taken, all costs shall be taxed to and paid by the city or village. [L. '83, p. 64, § 8; 1 H. C., § 764.]

§ 9339. [7880.] Payment of Damages by City or Town.

The damages awarded by the appraisers or assessed by the jury or court, in case of appeals, shall be paid by the city or village in the same manner that other debts or liabilities of such city or village are paid. [L. '83, p. 64, § 9; 1 H. C., § 765.]

CHAPTER XXI.

SPECIAL ASSESSMENTS, GENERAL PROVISIONS.

§ 9340. [7881.] County Lands Assessed.

All lands held or owned by any county in the state of Washington, in fee simple, in trust or otherwise, within the limits of any incorporated city or town in such county, except as herein otherwise provided, may be assessed and charged for the cost of all local improvements specially

benefiting such land and property, which may be ordered by the proper authorities of such city or town. [L. '05, p. 53, § 1.]

See supra, § 8125, assessment of state lands.

See supra, §§ 9233—9274, assessments in eminent domain proceedings.

Liability of county property to special assessment. 16 Ann. Cas. 887; Ann. Cas. 1917D, 847.

§ 9341. [7882.] Assessment and Payment by County.

In all local improvement assessment districts in an incorporated city or town in this state, property in such district held or owned by the county in which such city or town is situated shall be assessed and charged for its proportion of the cost of such local improvement in the same manner as other property in such district, and the county commissioners of any such county are authorized to cause such assessment to be paid at the times and in the manner provided by law and the ordinances of such city or town creating such local improvement districts, and making such assessments, and to pay any and all such assessments in any local improvement district heretofore made and which became due and payable prior to the time this act shall take effect, together with interest on such past due assessments. [L. '05, p. 53, § 2; L. '07, p. 100, § 1.]

"This act" refers to §§ 9340—9343.

§ 9342. [7883.] Assessment to be Certified to County Commissioners.

Upon the approval and confirmation of the assessment-roll for any local improvement ordered by the proper authorities of any incorporated city or town in this state, the city or town treasurer shall certify and forward to the board of county commissioners, of the county in which such city or town is situated, a statement of all the lots or parcels of land held or owned by such county and charged on such assessment-roll for the cost of such local improvement, separately describing each lot or parcel of the county's land with the amount of the assessment charged against it, and the board of county commissioners shall cause the amount of such local assessments to be paid to the city or town as other claims and charges against such county are paid. [L. '05, p. 53, § 3.]

§ 9343. [7884.] Construction of Act—Exception.

The provisions of this act shall apply to all municipal corporations, any charter or ordinance provisions to the contrary notwithstanding: Provided, that this act shall not apply to lots which the county may have obtained title to through the foreclosure of the general tax lien. [L. '05, p. 54, § 4.]

"Act" refers to the three preceding sections.

§ 9344. [7885.] City to Pay Assessments Against City Property.

Every city of the first, second and third class shall include in its annual tax levy an amount sufficient to pay all unpaid assessments, with all interest, penalties and charges thereon levied against all lands of such city. [L. '09, p. 426, § 1.]

Liability of municipal property to special assessment. 16 Ann. Cas. 888; Ann. Cas. 1917D, 849.

§ 9345. [7886.] Treasurer's Statement to City Council—Payment—Funds.

On or before the fifteenth day of August of each year, the city treasurer of each such city shall certify to the city council thereof a detailed statement showing the proceedings authorizing and confirming such assessments, the city's lots, tracts and parcels of land so assessed, the several assessments against each, the interest, penalties and charges thereon, together with the estimated interest, penalties and charges which will accrue upon such assessments to date of payment and the total of all such assessments, interest, penalty and charges. The proceeds of such portion of the tax levy shall be placed by such city treasurer in a separate fund to be known as the "City property assessment redemption fund" and by him inviolably applied in payment of any unpaid assessment liens on any lands belonging to such city. The longest outstanding liens shall be paid first, but if the moneys in such fund shall at any time be insufficient to discharge all such liens against such lands upon a given assessment-roll, such city treasurer may pay such portion thereof as may be possible from the funds available therefor: Provided, that the city council of such city may, if it be deemed necessary, transfer any sum or sums to such fund from the general fund of such city as a loan, such transfer to be repaid when moneys shall be available therefor in the fund hereby created. [L. '09, p. 426, § 2.]

§ 9346. [7887.] Warrants on Improvement Funds to Satisfy Assessment.

Municipal corporations may from time to time authorize by ordinance or resolution, the acceptance, in due order of priority of right, by the county treasurer or city treasurer or other designated officers, of warrants issued by such corporations against local improvement funds in satisfaction of assessments levied to supply such funds. [L. '99, p. 156, § 1.]

§ 9347. [7888.] Warrants in Satisfaction of Judgments.

Municipal corporations are authorized to accept local improvement warrants in satisfaction of judgments rendered in favor of such corporations against property owners who have become delinquent in the payment of assessments levied to pay for local improvements. [L. '99, p. 156, § 2.]

Cited in 53 Wash. 130.

§ 9348. [7889.] Payment for Certificates of Purchase by Warrants.

Municipal corporations are authorized to accept local improvement warrants in payment for certificates of purchase held by such corporations in cases where the property of delinquents has been sold by the sheriff under execution or by the county treasurer or city treasurer at tax sale for failure to pay assessments for local improvements. [L. '99, p. 157, § 3.]

§ 9349. [7890.] Warrants and Assessments must Relate to Same Improvement.

No warrants shall be available for the purposes designated by this act except in payment of an assessment for a local improvement, the fund for which was created by the ordinance or resolution by virtue of which the warrant was issued. [L. '99, p. 157, § 4.]

"This act" refers to §§ 9346—9350.

§ 9350. [7891.] Act Concurrent.

This act is not intended to supersede or repeal charter provisions of any municipal corporation, but to be supplementary to and concurrent with such provisions; and the powers conferred by this act may be exercised from time to time under such restrictions and upon such conditions as municipal corporations may by ordinance prescribe. [L. '99, p. 157, § 5.]

"Act," in this section, refers to §§ 9346—9350.

§ 9351. [7892.*] Excess Refunded on Demand—Right of Action.

Any funds in the treasury of any municipal corporation belonging to the fund of any local improvement district after the payment of the whole cost and expense of such improvement, in excess of the total sum required to defray all the expenditures by such municipal corporation on account thereof, shall be refunded, on demand, to the payers into such fund. Each such payer shall be entitled to such proportion of such excess as his original assessment bears to the entire original assessment levied for such improvement. Such municipal corporation may, after one year from the date on which the last installment becomes due, transfer any balance remaining on hand to the general fund of such municipal corporation, but shall, notwithstanding such transfer remain liable for the refund herein provided for until such refund shall have been made, unless the actual cost involved in making such refund shall exceed the excess in such fund.

Such demand shall be made in writing to the treasurer of such municipal corporation. No action shall be commenced in any court to obtain any such refund, except upon such demand, and, in all cases where the assessment-roll shall have been filed with the treasurer of such municipal corporation for collection on or after the day this act shall take effect, until ninety days after making such demand, and in all cases where such assessment-roll has heretofore been filed for collection, until six months after making such demand in accordance herewith. No excess shall be recovered in any action where the excess in the fund does not average the sum of one dollar in favor of all payers into such fund.

Provided, further, that this section shall not be deemed to require the refunding of any balance left in any local improvement fund after the payment of all outstanding obligations issued against such fund, where such balance accrues from any saving in interest or from penalties collected upon delinquent assessments, but any such balance, whether accruing heretofore or hereafter, may be turned into the general fund or otherwise disposed of, as the legislative authority of such city may direct. [L. '17, p. 580, § 1; L. '09, p. 387, § 1.]

Cited in 60 Wash. 242, 245; 87 Wash. 699; 97 Wash. 197.

Rem. Code, § 7892 (amended by this act), was intended to be retroactive, and removes the bar of the statute of limitations where the same was passed at the next session of the legislature after a decision of the supreme court upholding the two-year statute of limitations from

the delinquency of the assessment as a reasonable one, the city having no moral right to the money, and the ascertainment of the amount often being postponed beyond the two-year period: State ex rel. McCullough v. Seattle, 60 Wash. 241, 110 Pac. 1008.

Rem. Code, § 7892, only authorized recovery by property owners where a fund

has been created after payment of the whole cost and expense of the improvement, and was enacted only to meet a past condition under former laws: *Chehalis v. Robinson*, 87 Wash. 690, 152 Pac. 696.

CHAPTER XXII.

LOCAL IMPROVEMENTS.

§ 9352. [7892-1.] May Provide for Local Improvements.

Any city or town in this state shall have power to provide for making local improvements and to levy and collect special assessments on property specially benefited thereby, for paying the cost and expense of the same or any portion thereof, as herein provided. [L. '11, p. 441, § 1.]

Cited in 73 Wash. 578, 581; 76 Wash. 213; 78 Wash. 96, 162, 360; 80 Wash. 287; 81 Wash. 515; 84 Wash. 567; 85 Wash. 258; 87 Wash. 99, 192; 91 Wash. 236, 531; 94 Wash. 560, 584, 585; 97 Wash. 378.

Power to Make Improvements: See Remington's Digest, Mun. Corp., §§ 113—128, and cases cited. See, also:

§ 124. Submission to Voters—Plan or System Adopted: *Langdon v. Walla Walla*, 112 Wash. 446, 193 Pac. 1.

Authority to Make Improvement or Expenditure—Construction or Improvement of Streets or Other Ways: See Remington's Digest, Mun. Corp., § 203; *McNair v. Ostrander*, 1 Wash. 110, 23 Pac. 414; *Knickerbocker Co. v. Seattle*, 69 Wash. 365, 124 Pac. 922; *Thorberg v. Hoquiam*, 77 Wash. 679, 138 Pac. 304.

Nature and Power to Levy Under Statutes: See Remington's Digest, Mun. Corp., §§ 198—202, and cases cited.

This section does not prohibit a city from proceeding with an improvement without first passing a general ordinance, it appearing that each step in the proceedings prior to the passage of the gen-

eral ordinance was directed by the city council, either by resolution or ordinance: *Great Northern R. Co. v. Leavenworth*, 81 Wash. 511, 142 Pac. 1155, Ann. Cas. 1916D, 239.

Provisions of a city charter of the first class with reference to the publication of notice of proposed improvements do not apply to proceedings under this chapter, in view of sections 9415 and 9424, *infra*, providing that the act shall supersede the provisions of the charter of any city of the first class inconsistent therewith: *Beach v. Bellingham*, 80 Wash. 287, 141 Pac. 703.

Authority to Make Expenditures: See Remington's Digest, Mun. Corp., §§ 203—205, and cases cited.

Nature of Property Liable and Exemptions, etc.: See Remington's Digest, Mun. Corp., §§ 206—215.

Meaning of term "local improvement" for which special assessment may be levied. 20 Ann. Cas. 339; Ann. Cas. 1914B, 542.

Right of municipality to contract for local improvement whose cost will exceed authorized debt limit. Ann. Cas. 1917B, 192.

§ 9353. [7892-2.] May Determine by Charter or Ordinance.

Any city or town shall have power to determine by charter or ordinance what work shall be done or improvements made at the expense, in whole or in part, of the property specially benefited thereby; and to provide the manner of making and collecting assessments therefor in pursuance of this act. [L. '11, p. 441, § 2.]

§ 9354. [7892-3.] May Provide for Sewer, Drain and Water Systems.

Any city or town shall have power to provide for the sewerage, drainage and water supply thereof, and to establish, construct and maintain a system or systems of sewers and drains and a system or systems of water supply, within or without the corporate limits of such city or town, and to control, regulate and manage the same. [L. '11, p. 441, § 3.]

§ 9355. [7892-4.] May Provide for Protection from Overflow.

Any city or town shall have power to provide for the protection of such city or town, or any part thereof, from overflow, and to establish, construct and maintain dikes, levees, embankments or other structures and works, or to open, deepen, straighten or otherwise enlarge natural watercourses, waterways and other channels, including the acquisition or damaging of lands, rights of way, rights and property therefor, within or without the corporate limits of such city or town, and to manage, regulate and control the same. [L. '11, p. 441, § 4.]

§ 9356. [7892-5.] Protection from Fire—Auxiliary Water Systems.

Any city or town shall have power to provide for the protection of such city or town, or any part thereof, from fire, and to establish, construct and maintain an auxiliary water system, or systems, or extensions thereof, or additions thereto, and the structures and works necessary therefor or forming a part thereof, including the acquisition or damaging of lands, rights of way, rights, property, water rights, and the necessary sources of supply of water for such purposes, within or without the corporate limits of such city or town, and to manage, regulate and control the same. [L. '11, p. 442, § 5.]

§ 9357. [7892-6.] Council to Order Improvements.

Whenever the public interest or convenience may require the council, or other legislative authority of any such city or town, is hereby authorized and empowered to order the whole or any part of the streets, avenues, lanes, alleys, boulevards, park drives, parkways, public squares, and places within any such city or town to be graded or regraded, planked or replanked, paved or repaved, macadamized, or remacadamized, graveled or regraveled, piled or repiled, capped or recapped or otherwise improved and to order sidewalks, drains, sewers, and all sewer appurtenances, culverts, bulkheads, retaining walls, water-mains, hydrants, or appurtenances, curbing and crosswalks, street lighting systems, together with the cost and expense of furnishing electrical energy to said street lighting systems, moving sidewalks or escalators, together with the cost and expense of operating and maintaining moving sidewalks or escalators, auxiliary water system, dikes and embankments, bridges and trestles, and approaches thereto, or other local improvement whatsoever to be constructed, reconstructed, repaired or renewed therein and to order the planting, setting out, cultivating, maintaining and renewing of shade or ornamental trees and shrubbery thereon; and to order any and all work to be done which shall be necessary to complete any such improvement; and to levy and collect special assessments to pay the whole or any part of the cost and expense of any such improvement. The city may require uniform setting out, planting, cultivating, maintenance and renewal of shade and ornamental trees and shrubbery on any street or highway. Any local improvement payable, in whole or in part, by special assessments, which shall include a charge for the cost and expense of furnishing electrical energy to any system of street lighting or for the cost and expense of operation and maintenance of moving sidewalks or escalators shall be initiated only upon petition signed by the owners of two-thirds

of the lineal frontage upon the improvement to be made and two-thirds of the area within the limits of the proposed improvement district. [L. '15, p. 532, § 6. Cf. L. '11, p. 442, § 6; L. '13, p. 409, § 1.]

Cited in 87 Wash. 194, 283; 92 Wash. 550.

See notes to § 9352, *supra*.

Improvements to be Ordered and Made by Council: See Remington's Digest, Mun. Corp., §§ 219—224, and cases cited.

This section is not unconstitutional in that the furnishing of electrical energy is not a "local improvement" within Con-

stitution, Article VII, section 9, vesting power in cities to make local improvements by assessments; notwithstanding the operation was limited to a period of ten years, since permanency is not an essential element, and the plant would be of no benefit to the property without the electrical energy: *Ankeny v. Spokane*, 92 Wash. 549, 159 Pac. 806, L. R. A. 1917A, 1093.

§ 9358. [7892-7.] Method of Procedure.

Whenever any city or town shall make local improvements at the cost and expense, in whole or in part, or [of] property specially benefited thereby, the proceedings for the same shall be had as provided in this act. [L. '11, p. 443, § 7.]

§ 9359. [7892-8.] Resolution or Petition.

Any such improvement may be ordered only by ordinance of the council, or other legislative body of such city or town, either upon petition or resolution therefor. [L. '11, p. 443, § 8.]

Cited in 73 Wash. 278.

Under this section and section 9371, a resolution creating a local improvement district for a distributing system for waterworks is valid, although prior to a

special election called to authorize the acquisition of a supply system outside of the city which it was intended to connect with the distributing system: *Matthews v. Ellensburg*, 73 Wash. 272, 131 Pac. 839.

§ 9360. [7892-9.] Petition.

In case any such local improvement, the assessment district for which shall not extend beyond the termini of such improvement, shall be initiated upon petition, such petition shall set forth the nature and territorial extent of such proposed improvement, the mode of payment and the fact that the signers thereof are the owners, according to the records in the office of the county auditor, of property to an aggregate amount of a majority of the lineal frontage upon the improvement to be made and of the area within the limits of the assessment district to be created therefor. If any such property stands in the name of a deceased person, or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian as the case may be, shall be equivalent to the signature of the owner of the property on such petition.

Such petition shall be presented to and filed with the city or town clerk, or with such officer, board or authority as may be designated by charter or ordinance. Upon filing such petition, the officer, board or authority, required by charter or ordinance so to do shall ascertain if the facts set forth in said petition are true and shall cause an estimate of the cost and expense of such improvement to be made, and shall transmit the same to the council of such city or town, together with all papers and information in his or their possession touching such improvement, with the estimated cost thereof, and his or their recommendations thereof, together

with a description of the boundaries of the district, and a statement of the proportionate amount of the cost and expense of such improvement which should be borne by property within the proposed assessment district and a statement of the aggregate assessed valuation of the real estate exclusive of improvements in said district according to the valuation last placed upon it for purposes of general taxation.

In case such petition shall be found sufficient, such board, officer or authority shall also transmit to the council a diagram or print showing thereon the lots, tracts or parcels of land and other property which will be specially benefited thereby and the estimated amount of the cost and expense of such improvement to be borne by each such lot, tract or parcel of land or other property. [L. '11, p. 443, § 9.]

Cited in 81 Wash. 264.

Proceedings: See Remington's Digest, Mun. Corp., §§ 228—233, and cases cited.

Under this section authorizing a city council to pass upon the sufficiency of a petition by which an improvement is initiated, and section 9371, making its action in all things conclusive, the passage of an ordinance ordering an improvement is, in effect, a finding that the petition was

sufficient: Redding v. Spokane, 81 Wash. 263, 142 Pac. 664.

Who may file petition or remonstrance in matter of local improvement: **Ann. Cas.** 1918E, 837.

Right to withdraw names from petition or remonstrance: 11 **L. R. A. (N. S.)** 372; 35 **L. R. A. (N. S.)** 1113.

§ 9361. [7892-10.] Resolution.

Any such improvement may be initiated directly by the city or town council by a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, and notifying all persons who may desire to object thereto to appear and present such objections at a meeting of the council at the time specified in such resolution; and directing the proper board, officer or authority to submit to the council at or prior to the date fixed for such hearing the estimated cost and expense of such improvement, and a statement of the proportionate amount thereof which should be borne by the property within the proposed assessment district, and a statement of the aggregate assessed valuation of the real estate, exclusive of improvements, within said district according to the valuation last placed upon it for the purposes of general taxation, together with a diagram or print showing thereon the lots, tracts and parcels of land and other property which will be specially benefited thereby and the estimated amount of the cost and expense of such improvement to be borne by each lot, tract, or parcel of land or other property. Such resolution shall be published in at least two consecutive issues of the official newspaper of such city or town, the date of the first publication to be at least fifteen (15) days prior to the date fixed by such resolution for hearing before the city council: Provided, that in any city or town not having an official newspaper, such publication may be made in any newspaper of general circulation published therein, or in case there be no such newspaper, then in a newspaper published in the county in which such city or town is located and of general circulation in such city or town. [L. '11, p. 444, § 10.]

Cited in 73 Wash. 279; 81 Wash. 512, 516; 89 Wash. 216; 93 Wash. 425, 427, 428.

Under this section the objection that a distributing system for waterworks constitutes a general benefit to the city and

is of no special benefit to property can only be urged to the city council on a hearing upon the assessment-roll: *Matthews v. Ellensburg*, 73 Wash. 272, 131 Pac. 839.

Resolution or Notice of Intention and Hearing Therein: See *Remington's Digest*, Mun. Corp., §§ 130—132, and cases cited.

§ 9362. [7892-11.] Diagram not Conclusive.

The diagram or print herein directed to be submitted to the council, shall be in the nature of a preliminary determination by such administrative board, officer or authority upon the method and relative estimated amounts of assessments to be levied upon the property specially benefited by such improvement, and shall in no case be constructed [construed] as being binding or conclusive in any way upon any such board, officer or authority, in the preparation of the assessment-roll for such improvement, or upon the council upon any hearing affecting such roll. [L. '11, p. 445, § 11.]

§ 9363. [7892-12.*] Limit of Assessment.

The council or other legislative body shall have jurisdiction to proceed with any such improvement initiated by petition or resolution: Provided, that in any city of the first class it appears from the certificate of the board, officer, or authority designated by charter or ordinance to determine the same that the proportion of the estimated cost and expense thereof to be assessed against the property in the proposed improvement district does not exceed fifty per cent (50%) of the valuation of the real estate, exclusive of improvements thereon, within such district, according to the valuation last placed upon it for purposes of general taxation: Provided, that this limit may be exceeded when any such improvement shall be petitioned for in the manner provided in section 9360, and such petition shall be signed by the owners of sixty (60%) per cent of the lineal frontage upon the improvement to be made and three-fourths of the area within the limits of the proposed improvement district, and shall specify a certain higher percentage up to which the property within such proposed improvement district may be assessed: Provided, further, that the jurisdiction of the council or other legislative authority to proceed with any such improvement initiated by resolution shall be divested by a protest filed with the council prior to the awarding of the contract for such improvement signed by the owners of three-fourths of the area within the limits of the proposed improvement district: Provided, further, that the jurisdiction of the city commission in cities organized under the commission form of government pursuant to chapter X of this Title to proceed with any such improvement initiated by resolution shall be divested by a protest filed with the commission prior to the awarding of the contract for such improvement signed by the owners of one-half of the area within the limits of the proposed improvement district. In the absence of fraud or gross mistake, such certificate of such board, officer or other authority shall be final and conclusive.

In computing the valuation of such property any nonassessable property owned by the United States, state, county, city, town, school district or other public corporation, shall be valued at the same rate as assessed property similarly situated. [L. '21, p. 420, § 1; L. '15, p. 526, § 1. Cf. L. '11, p. 445, § 12.]

Cited in 78 Wash. 95, 98, 102; 80 Wash. 290; 82 Wash. 43; 85 Wash. 258; 90 Wash. 211; 91 Wash. 222, 225.

Amount and Limits of Assessment: See Remington's Digest, Mun. Corp., §§ 234—238, 270—273, and cases cited.

This section has no retroactive effect and does not apply to a reassessment made after the passage of the act, where the improvement was initiated, the contract let, the work completed, the original assessment levied, and the special benefit conferred prior to the passage of the act: *East Hoquiam Co. v. Hoquiam*, 90 Wash. 210, 155 Pac. 754.

This section does not constitute a limitation upon the amount which each tract may be charged with, but has reference to the value of the property in the entire district: *State ex rel. Hindley v. Superior Court*, 82 Wash. 37, 143 Pac. 455.

The statutory provision that the estimated cost of a proposed improvement initiated by resolution shall not exceed fifty per cent of the valuation of the real estate exclusive of improvements thereon, being limited to cities of the first class, is of no avail as to cities other than the first class: *Reynolds v. Cosmopolis*, 84 Wash. 660, 147 Pac. 407.

A judgment upon appeal from a city council, reducing an assessment for a local improvement to fifty per cent of the assessed value of the property in the district is not res judicata of the right to reassess the property in excess of the reduced amounts in proceedings therefor including the property, in an enlarged district, in which the unit for determining the fifty per cent limit is the entire enlarged assessment district, and not the particular lots or tracts composing the district: *Eggerth v. Spokane*, 91 Wash. 221, 157 Pac. 859.

§ 9364. [7892-12½.] **Assessment of Leaseholds for Local Improvements.**

That all leasehold rights and interests of private persons, firms or corporations in or to harbor areas located within the corporate limits of any incorporated city or town are for the purpose of assessment for the payment of the cost of local improvements declared to be real property, and all such leasehold rights and interests may be assessed and reassessed in accordance with the special benefits received, the amount of such assessment to be limited to the benefits accruing during the term of the lease, for the purpose of paying the cost of any such improvement heretofore made or which may hereafter be made upon any street or other public place immediately abutting upon and within a distance of one-half of a block back from, but not exceeding three hundred and fifty (350) feet of, such improvement. [L. '15, p. 363, § 1.]

The illegal assessment of leased harbor area, which was not at the time assessable, is not validated by the sub-

sequent enactment of this section: *North American Lumber Co. v. Blaine*, 89 Wash. 366, 154 Pac. 446.

§ 9365. [7892-13.] **The Improvement District.**

Every ordinance ordering any improvement mentioned in this act, payment for which shall be made in whole or in part by special assessments, shall establish a local improvement district to be called "Local Improvement District No. —," which district shall embrace as near as may be all the property specially benefited by such improvement.

Except in the cases herein otherwise specifically provided for, and unless otherwise provided in the ordinance ordering such improvement, such district shall include all the property between the termini of said improvement abutting upon, adjacent, vicinal or proximate to the street, avenue, lane, alley, boulevard, park drive, parkway, public place or square proposed to be improved to a distance back from the marginal lines thereof to the center line of the blocks facing or abutting thereon: Provided, that in any case such distance back shall be at least ninety (90) feet: And provided, further, that in case of unplatted property, the dis-

tance back shall be the same distance as that included in the assessment of the platted lands immediately adjacent thereto. All property included within such limits of such local improvement district shall be considered and held to be the property and to be all the property specially benefited by such local improvement, and shall be the property to be assessed to pay the cost and expense thereof or such part thereof as may be chargeable against the property specially benefited by such improvement, which cost and expense shall be assessed upon all of said property so benefited in accordance to the special benefits conferred on such property in proportion to area and distance back from the marginal line of the street or other public way or area improved.

Said local improvement district shall, for the purpose of ascertaining the amount to be assessed against such separate lot, tract, parcel of land or other property within said district be divided into subdivisions or zones paralleling the margin of the street, avenue, lane, alley, boulevard, park drive or parkway, public place or square to be improved, said subdivisions to be numbered respectively first, second, third, fourth, and fifth. The first subdivision shall include all the lands within the district lying between the street margins and lines drawn parallel therewith and thirty (30) feet therefrom. The second subdivision shall include all lands within the district lying between lines drawn parallel with and thirty (30) feet and sixty (60) feet respectively from said margins. The third subdivision shall include all lands within the district lying between lines drawn parallel with and sixty (60) feet and ninety (90) feet respectively from such street margins. The fourth subdivision shall include all lands, if any, within the district lying between lines drawn parallel with and ninety (90) feet and one hundred twenty (120) feet respectively from said street margins. The fifth subdivision shall include all lands, if any, within the district lying between a line drawn parallel with and one hundred twenty (120) feet from said street margin and the outer limit of said local improvement district as hereinbefore described.

The rate of assessment per square foot in each subdivision shall be fixed on the basis that the special benefits conferred on a square foot of land in subdivisions first, second, third, fourth, and fifth, respectively, are related to each other as are the numbers 45, 25, 20, 10, and 5, respectively, and shall be ascertained in the following manner: The products of the number of square feet in subdivisions first, second, third, fourth, and fifth respectively, and the numbers 45, 25, 20, 10, and 5, respectively, shall be ascertained, and their sum taken, which sum shall be divided into the total cost and expense of such improvement. The products of the resultant quotient and the numbers 45, 25, 20, 10, and 5, respectively, shall be the separate rate of assessment per square foot for subdivisions first, second, third, fourth, and fifth, respectively. The total assessment thus ascertained against each separate lot, tract, parcel of land, or other property within such district shall be entered upon the assessment-roll as to the amount to be levied and assessed against each such separate lot, tract, parcel of land, or other property. Any number of disconnected streets or disconnected groups of streets may be included in one local improvement district: Provided, however, that such improvement shall be initiated only by petition signed by the owners of sixty (60%) per cent of the

lineal frontage and seventy-five (75%) per cent of the area of each of the subdistricts comprising such local improvement district. [L. '15, p. 527, § 2. Cf. L. '11, p. 446, § 13.]

Cited in 77 Wash. 286; 79 Wash. 36; 84 Wash. 661; 88 Wash. 206—208; 91 Wash. 226, 228, 234, 237; 94 Wash. 557, 559, 591; 95 Wash. 9.

Assessment Districts: See Remington's Digest, Mun. Corp., §§ 239, 239-1, and cases cited.

The term "block" was intended to refer to a square included by four streets as located by the prevailing scheme of streets in the locality; and "platted" property refers to that included by the regularly placed intersecting streets where the lands are capable of being platted; and "unplatted" lands refers to lands not so included; hence, where the next street to the north had been dedicated through only part of the abutting lands, the other portion of such lands is "unplatted," if capable thereof, and cannot be assessed back further than the immediately adjoining platted property, which extended back only half way to the next street: *Sivyer & Sons Co. v. Spokane*, 77 Wash. 282, 137 Pac. 808.

An assessment of property abutting upon an arterial street in specific sums against each lot, instead of spreading out the assessment under the zone system provided by this section, will not be set aside unless the property owner shows that he has been prejudiced by the method of assessment adopted, and that his assessment is larger than it would have been under the statutory method: *Moore v. Spokane*, 88 Wash. 203, 152 Pac. 999.

The assessment of the entire cost of the improvement of an arterial street upon abutting property is not a proceeding upon a fundamentally wrong basis, in view of this section: *Moore v. Spokane*, 88 Wash. 203, 152 Pac. 999.

The legislative determination by a city council of public necessity has no bearing upon the question of special benefits, which is a judicial question, under Constitution, Article VII, section 9, and §§ 9373, 9374: *Shilshole Avenue, In re*, 94 Wash. 583, 162 Pac. 1010.

§ 9366. [7892-14.] Enlarged District.

Whenever any local improvement shall be of such nature and character that the especial benefits resulting therefrom extend beyond the boundaries of the local improvement district hereinbefore described and defined, the council may create an enlarged district, which shall include as near as may be all the property especially benefited by such improvement. In such case, the petition or resolution initiating such improvement shall state that it is proposed to create an enlarged district to pay the whole or a portion of the cost and expense of such improvement and shall specify and describe the boundaries of such enlarged district, and shall specify a fixed amount of the cost and expense of such improvement to be assessed against that portion of the property within such enlarged district, lying between the termini of the proposed improvement and extending back from the marginal lines thereof to the middle of the block on each side thereof, in the mode prescribed in the preceding section hereof, and that such portion of the remainder of such cost and expense, as may not be borne by any general fund, shall be distributed and assessed against all the property included in the remainder of such enlarged district in accordance with special benefits.

The council in case it shall order such improvement, shall in the ordinance therefor specify and describe the boundaries of such district as defined in such petition or resolution. [L. '11, p. 448, § 14.]

Cited in 79 Wash. 35; 87 Wash. 206; 91 Wash. 226, 228, 237; 95 Wash. 6.

This section provides that the petition or resolution for such enlarged district shall specify the fixed proportionate amount to be assessed against the prop-

erty in the enlarged district; hence it is not necessary that the final ordinance specify the proportion to be charged to the enlarged district: *State ex rel. Independent Asphalt Paving Co. v. Gill*, 87 Wash. 201, 151 Pac. 498.

§ 9367. [7892-15.] Trunk Sewers and Water-mains.

Any city or town shall have power to provide for the construction of trunk sewers, and trunk water-mains, and for the payment of all or any part of the cost and expense thereof by the levying and collecting of assessments upon property specially benefited thereby. In any such case the district created to bear such assessment shall be outlined in conformity with topographical conditions, and in case of trunk sewers, shall include as near as may be all the territory which can be sewerred or drained through such trunk sewer and the subsewers connected thereto, and in case of trunk water-mains, shall include as near as may be all the territory in the zone or district to which water may be distributed from such trunk water-mains through lateral service and distribution mains and services. In distributing such assessments, there shall be levied against the property lying between the termini of the improvement and back to the middle of the blocks along the marginal lines of the street or areas improved, such amounts as would represent the reasonable cost of a local sewer and its appurtenances, or water-main and its appurtenances suited to the requirements of such territory in the mode prescribed in section 9365, and the remainder of the cost and expense of such improvement shall be distributed over and assessed against all of the property within the boundary of said entire district in accordance with the special benefits conferred thereon and in proportion to area. [L. '11, p. 449, § 15.]

Cited in 79 Wash. 36; 89 Wash. 217, 222.

An original improvement for a trunk sewer, under this section, is not controlled by sections 9365, 9366, hence it is not necessary, in assessing for a trunk sewer for which no laterals were to be constructed at that time, to include in the assessment district outlying property which would be benefited when laterals were constructed and connected with the trunk sewer, without making an enlarged district as required by section 9366: *Brown v. Anacortes*, 79 Wash. 33, 139 Pac. 652.

If a sewer assessment district does not include all the property susceptible of sewerage or drainage through the contemplated sewer, as required by this section, the city could, by proper proceedings, enlarge the district by including the omitted property; and especially so, after a reassessment had been ordered under sections 9395, 9396, requiring the reassessment to be made upon all property specially benefited, whether or not included in the original assessment district; provided the assessment does not exceed the actual cost and expense of the improve-

ment: *Triangle Traders v. Bremerton*, 89 Wash. 214, 154 Pac. 193.

An assessment for a trunk sewer must have the boundaries of the district prescribed by ordinance, and the levy upon property between the termini of the improvement back to the middle of the block must be limited to the reasonable cost of a local sewer and its appurtenances, the remainder of the cost to be distributed over all the property in the district in accordance with special benefits in proportion to area, as expressly required by this and the next section: *Triangle Traders v. Bremerton*, 89 Wash. 214, 154 Pac. 193.

The superior court has no power, under the statute authorizing eminent domain proceedings by cities, to direct the exact limits of territory that should be included in any assessment district, that being a legislative power delegated to the eminent domain commissioners: *Seattle v. Puget Sound Traction, Light & Power Co.*, 91 Wash. 567, 158 Pac. 252.

Property subject to special sewer assessment: *Ann. Cas.* 1915D, 384.

§ 9368. [7892-16.] Resolution and Ordinance for Trunk Sewers and Water-mains.

The council, before ordering the construction of any trunk sewer or trunk water-main, shall pass a resolution declaring its intention to order such improvement, which resolution shall set forth the general nature of such improvement, describing the routes along which such trunk sewer,

subsewer and branches, or trunk water-main and laterals is to be constructed, and notifying all persons who may desire to object thereto to appear at a meeting of the council at a time specified in such resolution and present their objections thereto, and directing the proper board, officer or authority to report to the council at or prior to the date fixed for such hearing, the estimated cost and expense of such improvement. Such resolution shall be published in all respects the same as provided for the publication of resolutions mentioned in section 9361.

The council may order such improvement only by ordinance, which ordinance shall describe the routes along which such improvement is to be constructed, and established and fix the boundaries of the district to be assessed for such improvement. Maps, plans and specifications therefor shall be prepared in such manner as may be prescribed by ordinance, but shall be adopted by ordinance before the contract for such improvement shall be let. [L. '11, p. 449, § 16.]

Cited in 79 Wash. 36; 89 Wash. 216.

§ 9369. [7892-17.] Resolution and Ordinance for Dikes, Embankments, etc.

The council, before ordering the construction of any improvement provided for in section 9355, if the same or any part thereof is to be paid by special assessment as hereinbefore provided, shall first pass a resolution declaring its intention to order such improvement, which resolution shall set forth the general nature of such improvement, the place of commencement and ending thereof, the route to be used, the estimated cost and expense thereof, the boundaries of the special assessment district to be formed, and notifying all persons who may desire to object thereto to appear at a meeting of the council at a time specified in such resolution and present their objections thereto. Such resolutions shall be published in all respects as other resolutions provided for in section 9361 are required to be published. If protests against such improvement are filed by the owners of property included in said proposed assessment district against such improvement, representing an aggregate amount of two-thirds of the area included in such proposed district, the council shall not proceed further with the work under such resolution.

The council may order such improvement only by ordinance, which ordinance shall describe the place of commencement and ending of such improvement, the route to be used, shall establish and fix the boundaries of such district and shall adopt the maps, plans and specifications for such improvement. [L. '11, p. 450, § 17.]

§ 9370. [7892-18.] Resolution and Ordinance for Auxiliary Water System.

The council before ordering the construction of any improvement authorized in section 9356, shall first pass a resolution declaring its intention to order such improvement, which resolution shall set forth the general nature of such improvement, describing the routes along which such auxiliary water system, or extensions thereof or additions thereto, is to be constructed, specifying the structures or works necessary thereto or forming a part thereof, the estimated cost and expense thereof, the

boundaries of the local improvement district to be formed to pay the whole or any portion of such cost and expense, and notifying all persons who may desire to object thereto to appear at a meeting of the council at a time specified in such resolution and present their objections thereto. Such resolution shall be published in all respects as other resolutions provided for in section 9361, are required to be published.

The council may order such improvement only by ordinance, which ordinance shall describe the route to be used, specify the structures or works necessary thereto or forming a part thereof, fix and establish the boundaries of such district, and adopt the maps, plans and specifications for such improvement. [L. '11, p. 451, § 18.]

§ 9371. [7892-19.] Action of Council Conclusive.

The council may continue the hearing upon any petition or resolution provided for in this act and shall retain jurisdiction thereof until the same be finally disposed of. The action and decision of the council as to all matters passed upon by it in relation to any such petition or resolution shall be final and conclusive. [L. '11, p. 451, § 19.]

Cited in 73 Wash. 281; 81 Wash. 264.

A petition for a local improvement not being a jurisdictional requirement, but one subject to waiver and which the legislature could have dispensed with, the

legislature had power to provide by this section, that the action of the city council upon the sufficiency of the petition shall be final and conclusive: Redding v. Spokane, 81 Wash. 263, 142 Pac. 664.

§ 9372. [7892-20.] The Assessment Lien.

The charge on the respective lots, tracts, parcels of land and other property, for the purpose of special assessments to pay the cost and expense, in whole or in part of any improvement authorized in this act, when assessed and the assessment-roll confirmed by the legislative body of such city or town in the manner therein provided by ordinance, shall be a lien upon the property assessed from the time said assessment-roll shall be placed in the hands of the officer authorized by law to collect such assessments. Said lien shall be paramount and superior to any other lien or encumbrance whatsoever, theretofore, or thereafter created except a lien for assessments for general taxes. [L. '11, p. 452, § 20.]

Lien and Priority: See Remington's Digest, Mun. Corp., § 284, and cases cited.

Lien of special assessment as affected by sale of property for general tax. *Ann. Cas.* 1913A, 678.

Superiority of lien of local assessment over prior lien. 35 *L. R. A.* 372; 30 *L. R. A. (N. S.)* 761; *Ann. Cas.* 1913C, 1210.

Priority as between liens for public improvements. 5 *A. L. R.* 1301.

§ 9373. [7892-21.] The Assessment-roll and Objections Thereto.

Whenever any assessment-roll for local improvements shall have been prepared as provided by law, such roll shall be filed with the clerk of such city or town. The council shall thereupon fix a date for hearing upon such roll before the council and direct the clerk to give notice of such hearing and the time and place thereof.

Such notice shall specify such time and place of hearing on such roll, and shall notify all persons who may desire to object thereto to make such objections in writing and to file the same with such clerk, at or prior to the date fixed for such hearing; and that at the time and place fixed

and at such other times as the hearing may be continued to, the council will sit as a board of equalization for the purpose of considering such roll, and at such hearing, or hearings, will consider such objections made thereto, or any part thereof, and will correct, revise, raise, lower, change or modify such roll, or any part thereof, or set aside such roll and order that such assessment be made de novo, as to such body shall appear just and equitable, and then proceed to confirm the same by ordinance.

Such notice shall be published at least five (5) times in the official daily newspaper of such city or town or two (2) times in the official weekly newspaper of such city or town, or, in the case of any city or town not having an official newspaper, then in such other newspaper designated in section 9361: Provided, that at least fifteen (15) days must elapse between the date of last publication thereof and the date fixed for such hearing.

The council or other legislative body of such city or town, at the time fixed for hearing objections to the confirmation of said roll, or at such time or times as said hearing may be adjourned to, shall have power to correct, revise, raise, lower, change or modify such roll, or any part thereof, and to set aside such roll and order that such assessment be made de novo, as to such body shall appear equitable and just, and then shall confirm the same by ordinance. All objections shall state clearly the grounds of objections; and objections not made within the time and in the manner herein prescribed shall be conclusively presumed to have been waived.

Whenever any such roll shall be amended so as to raise any assessments appearing thereon, or to include omitted property, a new time and place for hearing, and a new notice of hearing on such roll, as amended, shall be fixed and given as in the case of an original hearing: Provided, that whenever any property shall have been entered originally upon such roll and the assessment upon any such property shall not be raised, no objections thereto shall be considered by the council or by any court on appeal, unless such objections be made in writing at, or prior to the date fixed for the original hearing upon such roll. [L. '11, p. 452, § 21.]

Cited in 76 Wash. 385; 77 Wash. 474; 78 Wash. 101; 81 Wash. 265; 84 Wash. 568; 94 Wash. 591; 98 Wash. 340; 111 Wash. 116.

Assessment-roll, Rights Under, Waiver, and Objections: See Remington's Digest, Mun. Corp., §§ 252—260, and cases cited.

Confirmation or Revision by Council:

See Remington's Digest, Mun. Corp., § 261, and cases cited.

Estoppel of property owner to attack validity of assessment. *Ann. Cas.* 1915B, 753; 36 *L. R. A. (N. S.)* 39.

Loss of right to contest assessment in street, sewer or drainage proceeding by waiver, estoppel or the like. 9 *A. L. R.* 634, 842.

§ 9374. [7892-22.] Method of Appeal.

The decision of the council or other legislative body upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of such city or town and with the clerk of the superior court in the county in which such city or town is situated

within ten days after the ordinance confirming such assessment-roll shall have become effective, and such notice shall describe the property and set forth the objections of such appellant to such assessment; and, within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment-roll and his objections thereto, together with the ordinance confirming such assessment-roll, and the record of the council or other legislative body with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such city or town clerk and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court, the appellant shall execute and file with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned to prosecute such appeal without delay and, if unsuccessful, to pay all costs to which the city is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three (3) days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the head of the legal department of such city or town, and to the city clerk, that such transcript is filed. Said notice shall state a time (not less than three (3) days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in cities and towns and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment-roll, and he shall modify and correct such assessment-roll in accordance with such decision. An appeal shall lie to the supreme court from the judgment of the superior court, as in other cases: Provided, however, that such appeal must be taken within fifteen (15) days after the date of the entry of the judgment of such superior court; and the record and opening brief of the appellant in said cause shall be filed in the supreme court within sixty (60) days after the appeal shall have been taken by notice as provided in this act. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. And the supreme court, on such appeal may correct, change, modify, confirm or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the order of the supreme court upon such appeal shall

be filed with the officer having custody of such assessment-roll, who shall thereupon modify and correct such assessment-roll in accordance with such decision. [L. '11, p. 453, § 22.]

Cited in 76 Wash. 213; 78 Wash. 360; 82 Wash. 307, 308; 84 Wash. 568; 91 Wash. 231; 94 Wash. 561, 587, 591; 98 Wash. 339; 108 Wash. 212, 213.

Appeal and Review by Courts: See Remington's Digest, Mun. Corp., §§ 262—269, and cases cited.

This section, authorizing costs for a transcript furnished by a city clerk on appeal from an assessment-roll, does not permit the allowance of costs for a transcript furnished by a party: Eggerth v. Spokane, 91 Wash. 221, 157 Pac. 859.

While the filing of a transcript within ten days under this section is a jurisdictional step in the taking of an appeal from the confirmation of an assessment-

roll, it will not work a dismissal of the appeal where timely demand was made upon the city clerk and the failure to file the same within time was due to the inability of the clerk to prepare the transcript: Local Improvement Districts Nos. 29 to 37, Yakima County, In re, 108 Wash. 211, 183 Pac. 107.

A property owner, in an action to cancel a street assessment, may show that the property improved was not a public street, since the city cannot acquire the property unless the public necessity is judicially determined, nor unless its cost can be found in assessments or within the city's debt limit: Allen v. Spokane, 108 Wash. 407, 184 Pac. 312.

§ 9375. [7892-23.] Proceedings Conclusive.

Whenever any assessment-roll for local improvements shall have been confirmed by the council or other legislative body of such city or town as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the council upon such assessment-roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this act, and not appealing from the action of the council in confirming such assessment-roll in the manner and within the time in this act provided. No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: Provided, that this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (1) that the property about to be sold does not appear upon the assessment-roll, or (2) that said assessment has been paid. [L. '11, p. 455, § 23.]

Cited in 78 Wash. 101; 82 Wash. 307, 308; 87 Wash. 99, 100, 102; 89 Wash. 374; 92 Wash. 467; 95 Wash. 585; 97 Wash. 377, 378; 108 Wash. 220.

Conclusiveness, Estoppel and Waiver: See Remington's Digest, Mun. Corp., §§ 256—261, and cases cited.

The fact that a property owner petitioned for an improvement and made affidavit that the property was a public street will not estop him from maintaining an action to cancel the assessment when it is found that the property improved was not public property: Allen v. Spokane, 108 Wash. 407, 184 Pac. 312.

§ 9376. [7892-24.*] Time of Payment, Interest, Penalty.

Any city or town shall prescribe by ordinance within what time such assessments, or installments thereof, shall be paid; and shall provide for the payment and collection of interest thereon, at a rate not to

exceed eight per cent per annum. Assessments or installments thereof, when delinquent, in addition to such interest shall bear such penalty not less than five per cent as shall be by general ordinance prescribed. Interest and penalty shall be included in, and shall be a part of, the assessment lien. All local assessments becoming a lien upon any property in any city or town after this act shall become effective, shall be collected by the treasurer of such city or town, and all such liens shall be enforced in the manner herein prescribed: Provided, that in cities and towns other than cities of the first class, delinquent assessments, or delinquent installments thereof, shall be certified to the treasurer of the county in which such city or town is situate and by him entered upon the general tax-rolls and collected as other general taxes are collected: Provided, that after such certification any such city or town shall have the right to proceed in its own name to collect or enforce any such delinquent assessment or delinquent installment. The county treasurer shall remit to the city treasurer on the tenth of each month all sums so collected. All local assessments becoming a lien upon any property in any such city or town prior to the date this act shall become effective, shall be collected and such liens enforced in accordance with the laws in force and effect prior to the taking effect of this act: Provided, that in the enforcement of any such liens, any city or town may proceed under the provisions of this act, unless such proceeding shall have been already commenced. [L. '21, p. 241, § 1; L. '11, p. 456, § 24.]

Cited in 98 Wash. 536, 637.

Payments, Interest and Penalty: See Remington's Digest, Mun. Corp., §§ 285—287.

Local improvement assessments in cities of the third class charged by ordinance with interest at six per cent and a delinquent penalty of five per cent, "together with such additional charges or

penalties as are authorized to be collected upon other delinquent taxes," cannot be subjected to the fifteen per cent charge applicable to general taxes, in view of this section, and section 9424, *infra*; the fifteen per cent attaching to general taxes after delinquency being interest and not a penalty: *Shmuck v. Wheeler*, 98 Wash. 535, 167 Pac. 1126.

§ 9377. [7892-25.] Sale for Delinquent Assessments.

Any city or town may by general ordinance provide for the sale of property described in any local assessment-roll, after the assessment or any installment thereof shall have become delinquent, whether any such assessment became a lien after this act becomes effective, or prior thereto, for the amount of such delinquent assessment, or installment, together with penalty and interest accruing to date of sale, and for the costs of such sale; and for the execution and delivery by the treasurer of such city or town of certificates of sale to the purchaser, and for the execution by such treasurer of an assessment deed to the person thereunto entitled.

The treasurer shall give notice of such sales by publishing a notice thereof once a week for three consecutive weeks in the official newspaper of the city or town, or, in the case of any city or town not having an official newspaper, then in such newspaper specified in section 9361. Such notice shall contain a list of all property upon which such assessments are delinquent with the amount of the assessments, interests, penalties and costs to date of sale, including the cost

of advertising such sale, together with the names of the owners of such property, or the words "Unknown Owners," as the same may appear upon said assessment-roll, and shall specify the time and place of sale, and that the property therein described will be sold to satisfy the assessments, interests, penalties and costs, due upon the same. All such sales shall be made between the hours of 10 o'clock A. M. and 4 o'clock P. M. and shall take place at the front-door of the building in which the city or town council holds its sessions. Such sale shall be continued from day to day, omitting Sundays and legal holidays, until all the property described in said assessment-roll on which any such assessment, or installment thereof, is delinquent and unpaid, is sold. All such sales shall be public, and each lot, tract or parcel of land, or other property, shall be sold separately and in the order in which the same appears upon the assessment-roll, commencing at the beginning thereof.

All lots, tracts and parcels of land and other property sold for delinquent and unpaid local assessments, shall be sold to the first person at such sale offering to pay the amount due on each such lot, tract or parcel of land or other property. If there be no bidder for any lot, tract or parcel of land, or other property, for a sum sufficient to pay the delinquent and unpaid assessments thereon, or installment thereof, with interest, penalty and costs, the treasurer shall strike the same off to the city or town for the whole amount which he is required to collect by such sale. If any bidder to whom any property is stricken off at such sale does not pay the assessment, interest, penalty and costs before 10 o'clock A. M. on the day following the day of such sale, such property must then be resold, or if the assessment sale is closed, be deemed to have been sold to the city or town, and a certificate of sale shall be issued to the city or town therefor. [L. '11, p. 457, § 25.]

Enforcement of Assessments and Special Taxes: See Remington's Digest, Mun. Corp., §§ 288—309, and cases cited.

§9378. [7892-26.] Return of Sale.

Within fifteen days after the completion of the sale of all property described in such assessment-rolls, and authorized to be sold as aforesaid, the treasurer must make return to the comptroller, or other officer by whom the warrant was issued for such sale, with a statement of his action thereon, showing all the property sold by him, to whom sold and the sums paid therefor. [L. '11, p. 458, § 26.]

§9379. [7892-27.] Certificate of Sale.

After receiving the amount of the assessment, penalty, interest, costs and charges, the treasurer shall make out a certificate, dated on the day of sale, stating (when known) the name of the owner as given on the assessment-roll, a description of the land or other property sold, the amount paid therefor, the name of the purchaser, that it was sold for the assessment, giving the names of the streets, or other brief designation of the improvement for which the assessment was made, and specifying that the purchaser will be entitled to a deed two years from the date of sale, unless redemption thereof be made. Such certificate shall be signed by the treasurer, and shall be delivered to the purchaser, and

shall be by such purchaser recorded in the office of the county auditor in which the lands or other property is situated within three months from the date thereof. If not recorded within said time, the lien thereof shall be postponed to claims of subsequent purchasers and encumbrancers for the value and in good faith who become such while the same is unrecorded.

The city or town comptroller, if there be such officer, and if not then the city or town clerk, shall be the custodian of all certificates for the property sold to the city or town and shall at any time within two years from the date of such certificate, and before redemption of the property therein described, sell and transfer any such certificate to any person who will present to him the treasurer's receipt evidencing payment to the treasurer of the amount for which the property therein described was stricken off to the city, with interest subsequently accrued to date of such payment thereon, and such comptroller or clerk may, if so authorized by the council, sell and transfer any such certificate in like manner after the expiration of such period of two years from the date of the certificate. [L. '11, p. 458, § 27.]

Conveyance to Purchaser in General: See Remington's Digest, Mun. Corp., § 308, and cases cited.

§ 9380. [7892-28.] Redemption Fund.

All moneys collected by the treasurer upon any assessments under this act shall be kept as a separate fund, to be known as "Local Improvement Fund, District No. —," and shall be used for no other purpose than the redemption of warrants and bonds drawn or issued upon or against said fund. [L. '11, p. 459, § 28.]

Cited in 93 Wash. 405.

Redemption in General: See Remington's Digest, Mun. Corp., § 307, and cases cited.

Effect of Commingling Funds: See State ex rel. Titlow v. Centralia, 93 Wash. 401, 161 Pac. 74.

§ 9381. [7892-29.] Liability of Treasurer.

If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any property and afterward return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself, his clerk, assistant or deputy, he and his bond shall be liable to the holder of the certificate given to the purchaser at the sale for the amount of the face of the certificate, and the legal interest to be demanded within two years from the date of sale and recovered in any court having jurisdiction of the amount, and the city shall in no case be liable to the holder of such certificate. [L. '11, p. 459, § 29.]

§ 9382. [7892-30.] Record of Payment.

Whenever before the sale of any property the amount of any assessment thereon, with interest, penalty, costs and charges accrued thereon, shall be paid to the treasurer, he shall thereon mark the same paid, with the date of payment thereof on the assessment-roll, and whenever after the sale of any property for any assessment the same shall be redeemed,

he shall thereupon enter the same redeemed with the date of such redemption on such record. Such records shall be made on the margin of the record opposite the description of such property. [L. '11, p. 460, § 30.]

§ 9383. [7892-31.] Property Held in Trust.

Whenever any property shall be bid in by any city or town or be stricken off to any city or town under and by virtue of any proceeding or proceedings provided in this act said property shall be held in trust by said city or town for the fund of the improvement district for the creation of which fund said assessment was levied and for the collection of which assessment said property was sold, to the extent of the amount of the assessment or installment for which said property was sold, with penalty, accrued interest, and interest on said installment to time of next call for bonds or warrants: Provided, however, such city or town may at any time after the procuring of a deed pay in to such fund the amount of the delinquent assessment for which said property was sold and all accrued interest and interest to the time of the next call for bonds or warrants issued against such assessment fund at the rate provided thereon, and thereupon shall take and hold said property discharged of such trust. [L. '11, p. 460, § 31.]

§ 9384. [7892-32.] Sale of Property Held in Trust.

Any city or town may at any time after the period of redemption has expired and deeds issued to said city or town under and by virtue of any proceedings mentioned in this act, sell any such property at public auction to the highest bidder for cash, but no bid shall be accepted for any amount less than the amount set forth in said deed, plus accrued interest to date of sale, computed on the assessment for which said property was sold from the date of the execution of said deed, and all delinquent assessments and taxes that may stand against said property with accrued interest thereon, penalties, costs and other charges, and the said city or town shall pay into said fund for which said property was held in trust so much thereof as shall fully cancel the assessment for which said property was sold, together with all interest thereon.

Any such sale shall be had only upon notice setting forth a description of the property to be sold, that the city treasurer will sell such property on the day specified at the front door of the building in which the city or town council holds its sessions, between the hours of 10 o'clock A. M. and 4 o'clock P. M. and continue such sale from day to day, or withdraw such property from sale after the first day if the treasurer in his discretion deems that the interests of the city or town so require. Such notice shall be published at least five times in the official daily newspaper of such city or town, or at least two times in the official weekly newspaper of such city or town, or in the case of any city or town not having an official newspaper then at least two times in such other newspaper mentioned in section 9361: Provided, that at least fifteen days shall elapse between the date of last publication of such notice and the day such property is sold. [L. '11, p. 460, § 32.]

§ 9385. [7892-33.] Redemption and Deed.

Any property so sold for an assessment shall be subject to redemption by the former owner, or his grantee, mortgagee, heir, or other representative at any time within two years from the date of the sale upon the payment to the treasurer for the purchaser of the amount for which the same was sold, with interest at the rate of fifteen per cent (15) per annum, together with all taxes and special assessments, interest, penalties, costs and other charges thereon paid by the purchaser of such property at or since such sale, with like interest thereon. Unless written notice of taxes and assessments subsequently paid, and the amount thereof, shall be deposited with the city or town treasurer, redemption may be made without including the same. On any such redemption being made, the treasurer shall give to the redemptioner a certificate of redemption therefor, and pay over the amount so received to the purchaser of the certificate of sale or his assigns. Should no redemption be made within said period of two years, the treasurer shall, on demand of the purchaser or his assigns, and the surrender to him of the certificate of sale, execute to such purchaser or his assigns, a deed for the property therein described: Provided, that no such deed shall be executed until the holder of such certificate of sale shall have notified the owners of such property that he holds such certificate, and that he will demand a deed therefor. Said notice shall be given by personal service upon said owners: Provided, that in case said parties are non-residents of the state or cannot be found therein after diligent search, then such notice may be given by publication in the official paper of the city or town, or if there be no official paper, then in the manner provided in section 9361, once a week for three successive weeks. Such notice and return thereof, with the affidavit of the person, or in case of a city or town, of the comptroller or clerk, claiming such deed, showing that such service was made, shall be filed with the treasurer. If, notwithstanding such notice, no redemption be made within sixty days after the date of service, or the date of first publication of such notice, the holder of such certificate of sale shall be entitled to a deed thereon. Such deed shall be executed only for the property described in the certificate, and after payment of all delinquent taxes and special assessments thereon or installments thereof, and certificates of delinquency or other certificates issued for special or local assessments, whether the same were levied, assessed or issued prior or subsequent to the issuance of said certificates of sale: Provided, that any such deed may be issued to any city or town for the face amount for which said certificate of sale was issued, plus accrued interest, costs, penalties and charges, and shall be held by such city or town subject to the liens of general taxes and special assessments.

The deed shall be executed in the name of the city or town by which the improvement was made; shall recite in substance the matters contained in the certificate of sale, the notice to the owner, and that no redemption has been made of the property within the time allowed by law. The deed shall be signed and acknowledged by the city or town treasurer, as such, and shall be prima facie evidence that the

property was assessed according to and as required by law; that the assessment was not paid; that the property was sold as required by law; that it was not redeemed; that due notice of demand for deed had been given, and that the person executing the deed was the proper officer; and the deed shall be conclusive evidence of the regularity of all other proceedings from the assessment, up to and including the execution of the deed, and shall convey the entire fee-simple title to the property therein described, except as otherwise provided herein for cities and towns, stripped of all liens and claims except assessments for local improvements or installments thereof, not delinquent. [L. '11, p. 461, § 33.]

§ 9386. [7892-34.] Foreclosure.

Any city or town may proceed with the collection or enforcement of any delinquent assessment, or delinquent installment, whether the same became a lien after this act shall become effective, or prior thereto, by proceedings in court therefor in an action brought in its own name in the superior court in the county in which such city or town is situate. It shall not be necessary to bring a separate suit for each such separate piece or parcel of property delinquent, but for all or any part of the property delinquent under any single assessment-roll, or assessment district, may be proceeded against in the same action, and all or any of the owners or persons interested in any of the property so delinquent may be joined as parties defendant in the action to foreclose, and all or any liens for such delinquent assessments, or installments thereof, may be foreclosed in such proceeding. Such proceeding shall be tried before the court without a jury. In any such proceeding, it shall be sufficient to allege the passage of the ordinance providing such improvement, the making of such improvement, the levying of the assessment, the confirmation thereof, the date of delinquency of such assessment or installment, and that such assessment was not paid prior to such delinquency or at all. The assessment-roll and confirmatory order, or duly authenticated copies thereof shall be prima facie evidence of the regularity and legality of the proceedings connected therewith, and the burden of proof shall be on the defendants. In any such action where the owners or parties interested in any particular lot, tract or parcel of land or other property included in such suit shall suffer a default, the court may enter judgment of foreclosure and sale as to such parties and property so in default and order execution thereon, and the action may proceed as to the remaining defendants and property. The judgment of the court shall specify separately the amount of the assessment, or installment thereof, with interest, penalty and costs, chargeable to the several lots, tracts and parcels of land and other property in such proceedings. Such judgment shall have the effect of a separate judgment as to each lot, tract or parcel of land or other property, described in such judgment, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. In entering judgment, the court shall decree that such lots, tracts, or parcels of land or other property be sold to enforce such judgment and execution shall issue for the enforcement of such decree. Judgment may be entered as to any

one or more separate lots, tracts or parcels of land or other property involved in such proceeding, and the court may retain jurisdiction of the case as to the balance. All proceedings supplemental to judgment, including appeal, order of sale, sale, period of redemption and the issuance of deed shall be had and conducted in accordance with the law, now or hereafter in force, relating to property sold under or upon foreclosure of real estate mortgages. [L. '11, p. 463, § 34.]

§ 9387. [7892-34½.] Redemption from Sale for City Taxes or Assessments.

Any real property sold for any tax or assessment by any city or town, may be redeemed by the party entitled to make redemption, at any time before the issuance of the tax deed, on payment of the amount required to redeem said property from the sale, with accrued interest at the rate provided for redemption from such sale and costs. [L. '15, p. 667, § 1.]

§ 9388. [7892-35.*] Enforcement of Entire Assessment.

When the assessment upon property is payable in installments, the enforcement of the lien of any installment by any method herein authorized, shall not prevent the enforcement of the lien of any subsequent installment by any method herein authorized, when the same may become delinquent. Any such city or town may provide by general ordinance, that upon failure to pay any installment when due, the entire assessment shall become due and payable and the collection thereof enforced in the manner prescribed: Provided, however, that payment of such delinquent installment or installments due, together with interest, penalty and costs, at any time before entry of judgment in foreclosure as herein provided, shall extend the time of payment on the remainder of the assessments the same as if there had been no delinquency or foreclosure. [L. '19, p. 139, § 1. Cf. L. '11, p. 465, § 35.]

§ 9389. [7892-36.*] Certificate of Delinquency.

Any city or town may, by general ordinance, provide for the issuance of certificates of delinquency for any and all delinquent assessments, or installments thereof, heretofore or hereafter levied, and any penalty and interest thereon to date of issuance. Such certificates of delinquency shall constitute a lien against the property upon which such assessments were levied, and shall bear interest from the date of issuance thereof at the rate of twelve (12%) per centum per annum, and may be foreclosed after two years from the date of their issuance in the same manner and with the same effect as mortgages upon real estate are foreclosed. Such certificates may be issued to the city, or may be sold to any person applying therefor. They may be assigned in writing, and the city may sell and assign any and all certificates which may be issued to it upon the payment of the value thereof in principal and accrued interest, in cash. Such certificate shall be prima facie evidence that the land against which the same was issued was subject to the assessment at the time the same was assessed, that the property was assessed as required

by law, and that the assessment, or installment thereof, was not paid prior to the issuance of such certificate.

No such certificate of delinquency shall be issued upon any property for any assessment or installment thereof during the pendency of any proceedings in court affecting such assessment or installment thereof.

[L. '19, p. 139, § 2; L. '11, p. 465, § 36.]

Cited in 110 Wash. 106.

Reassessment of State Property may Include Interest: Reassessment Second School Addition, In re, 110 Wash. 104, 187 Pac. 1092.

Under this section, authorizing a city to issue and sell certificates of delinquency upon the nonpayment of local improvement assessment, assignments of which carry a lien against private property assessed, the state cannot object to

a reassessment of its property (required by want of notice), on the ground that there is no lien on state property; since the statute provides the method of paying assessments for local improvements upon state property, and the intent of the act is to subrogate the purchaser of certificates to the rights of the city as to unpaid installments: Reassessment Second School Addition, In re, 110 Wash. 104, 187 Pac. 1092.

§9390. [7892-37.] Omitted Property.

Whenever by mistake, inadvertence or for any cause property otherwise subject to assessment, within any assessment district, heretofore or hereafter created, shall have been omitted from the assessment-roll for such improvement, the council or other legislative body of such city or town may, upon its own motion or upon the application of the owner of any property within such district charged with the lien of an assessment for such improvement, proceed to assess such omitted property for such improvement, in accordance with the special benefits accruing to such omitted property by reason of such improvement and in proportion to the assessments levied upon other property in such district.

In any such case, the council or other legislative body shall first pass a resolution setting forth that certain property therein described was omitted from such assessment, and notifying all persons who may desire to object thereto to appear at a meeting of the council or other legislative body of such city or town at a time specified in such resolution and present their objections thereto, and directing the proper board, officer or authority to report to such council at or prior to the date fixed for such hearing the amount which should be borne by each such lot, tract or parcel of land or other property so omitted, which resolution shall be published in all respects as other resolutions provided for in section 9361. At the conclusion of such hearing or any adjournment thereof, the council shall consider the matter as though the property had been included upon the original roll, and may confirm the same or any portion thereof by ordinance. Thereupon such roll of omitted property shall be certified to the treasurer for collection as other assessments. [L. '11, p. 466, § 37.]

Cited in 98 Wash. 337.

§9391. [7892-38.] Fees for Issuance of Certificate and Deeds.

The city or town treasurer shall charge for the issuance of each certificate of sale and each certificate of delinquency the sum of fifty cents; for each deed the sum of one dollar. [L. '11, p. 466, § 38.]

§ 9392. [7892-39.] Lien of Purchaser.

The purchaser at any sale authorized in this act acquires a lien on the property so bid in by him for the amount paid by him at such sale as well as for all taxes and delinquent assessments, or delinquent installments thereof, and certificates of delinquency, and all interest, penalties, cost and charges thereon whether levied previously or subsequent to such sale, and whether for state, county, city or town purposes, subsequently paid by him on such property, and shall be entitled to interest at the rate of fifteen per cent per annum on the original amount paid by him from the date of said sale and upon such subsequent payments from the date of the payment of the respective amounts. [L. '11, p. 467, § 39.]

§ 9393. [7892-40.] Local Assessments Included in Certificate of Delinquency.

The holder of any certificate of delinquency for general taxes shall, before commencing any action to foreclose the lien of such certificate pay in full all local assessments or installments thereof outstanding against the whole or any portion of the property included in such certificate of delinquency, or, he may elect to proceed to acquire title to such property subject to certain or all local assessments a lien thereon, in which case the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state. If such holder shall pay such local assessments, he shall be entitled to fifteen per cent interest per annum on the amount of the delinquent assessments or delinquent installments thereof so paid, from date of payment.

In any action to foreclose any lien for general taxes upon any property a copy of the complaint shall be served on the treasurer of the city or town within which such property is situate within five days after such complaint is filed. In any case where any property shall be struck off to or bid in by the county at any sale for general taxes, and such property shall subsequently be sold by the county, the proceeds of such sale shall first be applied to discharge in full the lien or liens for general taxes for which the same was sold, and the remainder, or such portion thereof as may be necessary, shall be paid to the city to discharge all local assessment liens upon such property, and the surplus, if any, shall be distributed among the proper county funds. [L. '11, p. 467, § 40.]

Cited in 91 Wash. 419; 103 Wash. 87; 106 Wash. 356.

This section is germane to the title of the act; and the act is not unconstitutional as amending an act without setting out in full the section amended: *Holzman v. Spokane*, 91 Wash. 418, 157 Pac. 1086.

This is a valid act and must be complied with: *Lawrence v. Tacoma*, 103 Wash. 86, 173 Pac. 1017.

This section operates upon certificates purchased prior to the taking effect of the act: *Everett v. Adamson*, 106 Wash. 358, 180 Pac. 144.

§ 9394. [7892-41.] Limitation of Actions.

An action to collect any special assessment or installment thereof, for local improvements of any kind, or to enforce the lien of any such assessment or installment, whether such action be brought by a municipal corporation or by the holder of any certificate of delinquency, or by any other person having the right to bring such action, shall be commenced

within ten years after such assessment shall have become delinquent, or within ten years after the last installment of any such assessment shall have become delinquent when said special assessment is payable in installments. [L. '11, p. 468, § 41.]

§ 9395. [7892-42.] Reassessments Authorized.

In all cases of special assessments for local improvements, wherein said assessments have failed to be valid in whole or in part for want of form or insufficiency, informality, or irregularity or nonconformance with the provisions of law, charter or ordinance governing such assessments in any city or town, the council of any such city or town shall have power to reassess such assessments and to enforce their collection in accordance with the provisions of law and ordinance existing at the time the reassessment is made. Whenever, on account of any mistake, inadvertence or other cause, the amount assessed shall not be sufficient to pay the cost and expense of the improvement made and enjoyed by the owners of the property in the assessment district where the same is made, the council of such city or town is authorized and directed to make reassessments on all the property in said assessment district to pay for such improvement; such assessment to be made in accordance with the provisions of law and ordinance existing at the time of its levy. Any city or town is hereby authorized to assess or reassess all property which the council shall find to be specially benefited to pay the whole or any portion of the cost and expense of any local improvements which such city or town has heretofore made, is now making, or may hereafter make at the expense in whole or in part of property specially benefited thereby, whether or not such property so to be assessed or reassessed abuts upon, is adjacent to, or proximate to such improvement, or was included in the original assessment district; and the right to so assess all property so found to be specially benefited shall also apply to any supplemental assessment or reassessment which such city or town may find it necessary to make for the purpose of providing for any deficiency in any local improvement district fund caused by the invalidity of any portion of the original assessment in such improvement district, or where for any cause the amount originally assessed shall not be sufficient to pay the cost of the improvement.

Whenever any assessment for any local improvement in any city or town, whether the same be an original assessment, assessment upon omitted property, supplemental assessment or reassessment, heretofore or hereafter made, has been or may hereafter be declared void and its enforcement [refused] by any court, or for any cause whatever has been heretofore or hereafter may be set aside, annulled or declared void by any court, either directly or by virtue of any decision of such court, the council of such city or town shall make a new assessment or reassessment upon the property which has been or will be benefited by such local improvement, based upon the actual cost of such improvement at the time of its completion. [L. '11, p. 468, § 42.]

Cited in 78 Wash. 96, 102; 82 Wash. 89 Wash. 221, 223; 90 Wash. 212; 91 41; 85 Wash. 310, 315; 87 Wash. 698; Wash. 198—229, 237; 110 Wash. 108, 109.

Reassessments: See Remington's Digest, Mun. Corp., §§ 270—280, and cases cited.

Under the statute providing for the assessment of state property for local improvements in the same manner as other property, and this and the next section, providing for reassessments with "accrued interest," in case of invalidity, a reassessment against state property may include interest, especially in view of a provision for the payment of state assessments, with interest at six per cent: Reassess-

ment Second School Addition, In re, 110 Wash. 104, 187 Pac. 1092.

Effect of running of limitation since original assessment upon a reassessment order because of invalidity of original. 28 L. R. A. (N. S.) 735.

General liability of municipality on failure to make reassessment after failure to enforce assessment. 32 L. R. A. (N. S.) 176.

§ 9396. [7892-43.] Reassessment Ordinance.

The city council of any city or town shall proceed with any assessment authorized in the preceding section by passing an ordinance ordering the same, and directing the preparation of an assessment-roll therefor, which roll may include any property specially benefited by such improvement, whether or not the same was included in the original assessment district. Such additional property when so assessed shall become a part of the local improvement district theretofore created, or attempted to be created, to provide a fund to pay for said improvement, and all payments of assessments so ordered shall be paid into and become a part of the local improvement fund provided to pay for said improvement.

The fact that the contract has been let or that such improvement shall have been made and computed in whole or in part shall not prevent such assessment from being made, nor shall the omission, failure or neglect of any office or officers to comply with the provisions of law, the charter or ordinances governing such city or town, as to petition, notice, resolution to improve, estimate, survey, diagram, manner of letting contract or execution of work, or any other matter whatsoever connected with the improvement and the first assessment thereof, operate to invalidate or in any way affect the making of any assessment authorized in the preceding section: Provided, that such assessment shall be for an amount which shall not exceed the actual cost and expense of the improvement, together with the accrued interest thereon, it being the true intent and meaning of this act to make the cost and expense of local improvements payable by the property specially benefited thereby, notwithstanding the proceedings of the council, board of public works or other board, officer or authority of such city or town may be found irregular or defective, whether jurisdictional or otherwise; when such assessment is completed, all sums paid on the former attempted assessment shall be credited to the property on account of which the same were paid.

In any case where any property within the original local improvement district shall not be affected by an assessment authorized in the preceding section, such property need not be entered upon such assessment-roll.

After the certification of any such roll to the treasurer of any such city or town for collection, the same length of time for payment of the assessment appearing thereon, without the imposition of any

penalties or interest, and the notice that such assessments are in the hands of the treasurer thereof for collection, shall be given as in the case of an original assessment, and after delinquency such penalty and interest shall be charged as in cases of original assessment. Provided, that in all cases where the original assessment for the improvement was payable in installments, the new assessment, after delinquency, may be divided into such equal installments and made payable at such times as the council in the ordinance ordering such new assessment, may prescribe. [L. '11, p. 469, § 43.]

Cited in 78 Wash. 96, 102; 82 Wash. 41; 89 Wash. 224; 91 Wash. 198—229, 237; 85 Wash. 310, 311, 315; 87 Wash. 698; 110 Wash. 108, 109.

§ 9397. [7892-44.] Procedure in Case of Reassessment.

All the provisions of this act relating to the filing of assessment-rolls, time and place of hearing thereon, notice of such hearing, the hearing upon such roll, and the confirmation thereof, the time when such assessment shall become a lien upon the property assessed, the proceedings on appeal from any such assessment, the method of collecting such assessments and all proceedings for enforcing the lien thereof shall be had and conducted the same in the case of assessments authorized in section 9395, as in the case of an original assessment. [L. '11, p. 471, § 44.]

Cited in 91 Wash. 229, 237.

In General: See Remington's Digest, Mun. Corp., §§ 274—280, and cases cited.

§ 9398. [7892-45.] Time for Reassessments.

No city or town shall have jurisdiction to proceed with any reassessment or supplemental assessment unless the ordinance ordering the same shall be passed by the council or other legislative body of such city or town within ten years from and after the time the original assessment for any such improvement was finally held to be invalid, insufficient or for any cause set aside, in whole or in part, held void or its enforcement denied directly or indirectly by the courts; or, in the case of supplemental assessments, from and after the time that it was finally determined that the total amount of the valid assessments, levied and assessed on account of any such improvement was insufficient to pay the whole or that portion of the cost and expense thereof to be paid by special assessment. [L. '11, p. 471, § 45.]

Limitations: See Remington's Digest, Mun. Corp., § 280, and cases cited.

§ 9399. [7892-46.] May Issue Bonds.

The city council or other legislative body or any city or town may, in their discretion, provide by ordinance for the payment of the whole or any portion of the cost and expense of any local improvement authorized by law, by bonds of the improvement district, which bonds shall be issued to the contractor, or be issued and sold as herein provided. [L. '11, p. 471, § 46.]

§ 9400. [7892-47.*] Method of Issuance of Bonds.

Such bonds shall be issued only in pursuance of ordinances of the city or town issuing the same, and by their terms shall be made payable

on or before a date not to exceed twelve years from and after the date of the issue of such bonds, which latter date may be fixed by resolution, by council or other legislative body of said city or town and shall bear such interest as may be provided in such ordinance, not exceeding eight (8%) per centum per annum, which interest shall be payable annually, or semi-annually, as may be provided by ordinance, and each bond shall have attached thereto interest coupons for each interest payment: Provided, that whenever the improvement shall lie wholly or partly within the boundaries of any commercial water way district organized and existing under the provisions of chapter IX of this Title, and the acts amendatory thereof, such bonds may be made payable on or before a date not to exceed twenty-two (22) years from and after the date of the issue of such bonds: Provided further, that the legislative body of the city or town issuing any bonds hereunder may, by unanimous vote, authorize the issuance of said bonds payable on or before a date not to exceed twenty-two years from and after the date of the issue of such bonds, when the said legislative body shall also by like vote determine that the period during which said bonds are payable will not exceed the life of the improvement, and shall in such ordinance provide that the interest on said bonds issued for a period in excess of twelve years shall not exceed six per cent per annum, and must be sold at not less than par. Such bonds shall be in such denominations as shall be provided in the ordinance ordering their issue and shall be numbered from one upwards, consecutively, and each bond and coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: Provided, however, that said coupons may in lieu of being so signed have printed thereon a facsimile of the signatures of said officers and each bond shall have the seal of such city affixed thereto and shall refer to the improvement to pay for which the same shall be issued and to the ordinance ordering the same. Each bond shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise. Such bonds shall not be issued in any amount in excess of the cost and expense of the improvement. [L. '17, p. 578, § 1; L. '15, p. 530, § 4. Cf. L. '11, p. 472, § 47.]

Chapter IX substituted for "Chapter 11," Laws 1911. See *infra*, §§ 9724 to 9778.

§ 9401. [7892-48.] Sale of Bonds.

The bonds issued under the provisions of this act or such portion of such bonds as may remain unsold if same is ordered as hereinafter provided may be issued to the contractor constructing the improvement in payment thereof, or the ordinance directing the issue of such bonds may provide that the same may be sold by some authorized officer or officers of the city, in the manner prescribed therein, at not less than their par value and accrued interest, and that the proceeds thereof shall be applied in payment of the cost and expense of the improvement. [L. '11, p. 472, § 48.]

§ 9402. [7892-49.] Assessments Payable in Installments.

In all cases where any city or town shall issue bonds as provided in this act to pay the cost and expense of any local improvement, the said cost and expense shall be assessed against the lots, tracts, and parcels of land and other property, which under the provisions of law and the charter and ordinances of such city or town shall be liable therefor, but the ordinance levying such assessment shall provide that the sum charged thereby against each such lots, tracts, and parcels of land and other property or any portion of such sum may be paid during the thirty (30) day period provided for in section 9403 and that thereafter the sum remaining unpaid may be paid in equal annual installments, the number of which installments shall be less by two than the number of years which the bonds issued to pay for the improvement may run, with interest upon the whole unpaid sum so charged at a rate fixed by said ordinance, and each year thereafter one of such installments together with the interest due thereon and on all installments thereafter to become due shall be collected in the same manner as shall be provided by law and the charter and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued. [L. '15, p. 531, § 5. Cf. L. '11, p. 473, § 49.]

§ 9403. [7892-50.] Notice of Collection of Assessment.

The owner of any lot, tract or parcel of land or other property charged with any such assessments may redeem the same from all or any portion of the liability for the contract price of such improvement by paying the entire assessment or any portion thereof charged against such lot or parcel of land, without interest, within thirty days after notice to him of such assessment, which notice shall be given as follows: The city or town treasurer shall, as soon as the assessment-roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for ten consecutive daily or two consecutive weekly issues, that the said roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time within thirty days from the date of the first publication of said notice without penalty, interest or costs. The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days above mentioned, but may be issued at any time thereafter. The owner of any such lot or parcel of land may redeem the same from all liability for the unpaid amount of said assessment at any time after said thirty days by paying the entire installments of said assessment remaining unpaid and charged against such lot or parcel at the time of such payment, with interest thereon to the date of the maturity of the installment next falling due. In all cases where any sum is paid as herein provided the same shall be paid to the city treasurer, or to the officer whose duty it is to collect said assessments, and all sums so paid shall be applied solely to the payment of the cost and expense of such improvements or the redemption of the bonds issued therefor. [L. '11, p. 473, § 50.]

§ 9404. [7892-51] Remedy of Bondholder.

If the city or town shall fail, neglect or refuse to pay said bonds or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five per centum, together with the cost of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [L. '11, p. 474, § 51.]

§ 9405. [7892-52.] Confined to Enforcement of Assessment.

Neither the holder nor owner of any bond issued under the authority of this act shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his remedy in case of nonpayment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each bond so issued. [L. '11, p. 474, § 52.]

See supra, § 8990, sufficient compliance with this section.

§ 9406. [7892-53.] Exchange of Bonds, When Authorized.

Whenever any city has heretofore issued bonds for the purpose of paying the cost and expense of local improvements, or has sold such bonds and paid such cost and expense from the proceeds thereof, such city may, with the consent of the holders of such bonds, exchange for them bonds authorized by this act. [L. '11, p. 475, § 53.]

§ 9407. [7892-54.] Interest on Bonds, Call of Bonds.

The city or town treasurer shall pay the interest on the bonds authorized to be issued by this act out of the respective local improvement funds from which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds: Provided, that such bonds shall be called in and paid in their numerical order: Provided, further, that such call shall be made by publication in the city or town official newspaper in its first publication following the delinquency of the installment of the assessment or as soon thereafter as is practicable, and shall state that bonds No. — (giving the serial number or numbers of the bonds called) will be paid on the day the next interest coupons on said bonds shall become due, and interest on said bonds shall cease upon such date. [L. 11, p. 475, § 54.]

§ 9408. [7892-55.] Items of Cost.

Whenever any local improvement herein authorized shall be ordered, there shall be included in the cost and expense thereof to be assessed against the property specially benefited by such improvement and included in the district created to pay the same, or any part thereof, the

cost of that portion of said improvement included within the limits of any street intersection space or spaces, the estimated cost and expense of all engineering and surveying necessary for said improvement to be done by and under the direction of the city or town engineer, ascertaining the ownership of the lots or parcels of land included in the assessment district, advertising, mailing and publishing all notices required to be advertised, published or mailed, accounting and clerical labor, books and blanks extended or used by the city or town comptroller and the city or town treasurer in connection with said improvement. [L. '11, p. 475, § 55.]

Cited in 85 Wash. 6.

Under this section the city may include the whole or a part of the intersections to be taxed against the property

benefited, or may pay for the whole or a part of such intersections out of its general fund: *Buck v. Monroe*, 85 Wash. 1, 147 Pac. 432.

§ 9409. [7892-56.] Assess Tide Land Leases as Realty.

For the purposes of local assessment, all leases of tide lands owned in fee by the state of Washington shall be, and the same are hereby declared to be, real property. [L. '11, p. 476, § 56.]

§ 9410. [7892-57.] Parkways, Park Drives and Boulevards.

Any city or town council upon request of the board of park commissioners, shall have authority to designate such streets as they may see fit as parkways, park drives, and boulevards, and to transfer all care, maintenance and improvement of the surface thereof to the board of park commissioners, or to such authority of such city or town as may have the care and management of the parks, parkways, boulevards and park drives of the city.

Any city or town may acquire, either by gift, purchase or the right of eminent domain, the right to limit the class, character and extent of traffic that may be carried on such parkways, park drives and boulevards, and to prescribe that the improvement of the surface thereof shall be made wholly in accordance with plans of such board of park commissioners, but that the setting over of all such streets for such purposes shall not in any wise limit the right and authority of the city council to construct underneath the surface thereof any and all public utilities nor to deprive the council of the right to levy assessments for special benefits. In the construction of any such utilities, any damages done to the surface of such parkways, park drives or boulevards shall not be borne by any park funds of such city or town. [L. '11, p. 476, § 57.]

Assessment of parkway occupied by street railway company for street improvement. 10 A. L. R. 164.

§ 9411. [7892-58.] Assessment for Park Drives and Boulevards.

Whenever the management and control of the park drives, parkways and boulevards of any city or town shall be vested in a board of park commissioners or other similar authority of such city or town, the council of any such city or town may, upon request of such board or other similar authority therefor specifying the particular park drives, parkways or boulevards, or portions thereof, to be improved, and the nature of such

improvement, pass an ordinance providing for the improvement thereof, which ordinance shall be based either upon a resolution or a petition as hereinabove provided. Any such city or town shall have the same power to provide for making such local improvements and to levy and collect special assessments on property benefited thereby, and for paying the same or any portion thereof as in the case of other local improvements: Provided, that the plans and specifications for such improvements shall, before their adoption, be submitted to and approved by such board of park commissioners, or other similar authority of such city or town. [L. '11, p. 477, § 58.]

§ 9412. [7892-59.] Work to be Done by City or Contract.

All local improvements, the funds for the making of which are derived in whole or in part from assessments upon property specially benefited shall be made either by the city or town itself, or by contract upon competitive bids. The board, officer or authority charged with the duty of letting contracts for local improvements shall determine whether such local improvement shall be done by contract, or by the city itself. The city or town shall have power to reject any and all bids. [L. '11, p. 477, § 59.]

An assessment for a street improvement is not invalid for the reason that the contract for the improvement involved the use of a patented article, as in violation of this section, providing that contracts for local improvements shall be let upon competitive bids, where the owner of the patent furnished the city a license agreement in which it was agreed that the patented article would be furnished to the successful bidder, without reservation, which was done, and although the license

agreement provided that it should apply only to contracts for ten thousand square yards or more, while the contract in question was but for 6,650 square yards, it appearing that the bidders relied on the license agreement when submitting their bids, and that no objection was raised to that provision of the contract until the filing of objections to confirmation of the assessment-roll: *Great Northern R. Co. v. Leavenworth*, 81 Wash. 511, 142 Pac. 1155, Ann. Cas. 1916D, 239.

§ 9413. [7892-60.] General Ordinance.

The council of each city and town shall pass such general ordinance or ordinances as may be necessary to carry out the provisions of this act. Thereafter all proceedings relating to local improvements shall be had and conducted in accordance with this act, and the ordinances of such city or town relating to local improvements. [L. '11, p. 477, § 60.]

Cited in 81 Wash. 515; 98 Wash. 536.

§ 9414. [7892-61.] Validation of Local Improvement Assessments.

Whenever the city or town council of any city or town within this state has made, or shall hereafter make any assessment against property within any local improvement district for any purpose authorized in this act and has in making such assessment acted in good faith and without fraud or shall hereafter act in good faith and without fraud the said assessment shall be valid and enforceable as such and a lien upon the property upon which the same purports to be a lien; and it shall be no objection to the validity thereof that the contract for such improvement was not awarded in the manner or at the time required by law, nor shall it be any objection to the validity of such assessment that the same was made by an unauthorized officer or person, if the same shall have been confirmed by

the city or town authorities, of such city or town, nor, shall it be any objection to the legality of such assessment that the same is based upon a front-foot basis, or upon a basis of benefits to the property within such district unless it shall be made to appear that the city or town authorities did not act in good faith and did not attempt to act fairly in regard thereto, or unless it shall be made to appear that the city or town authorities acted fraudulently or oppressively in making such assessment; and all assessments heretofore or hereafter made which are made by the city or town authorities in good faith are hereby declared to be valid and in full force and effect, and to be collectible in the manner which is now or may hereafter be provided by law for the collection of assessments for the purposes specified in this section. [L. '11, p. 478, § 61.]

§ 9415. [7892-62.] Assessments Paid by Joint Owner.

Whenever any local assessment, or installment thereof, shall be paid, or any certificate of sale therefor be redeemed, or any judgment therefor be paid by any joint owner of any property assessed for any local improvement, such joint owner may, after demand and refusal, by an action brought in the superior court, recover from each of his co-owners the respective amounts of such payment which each such co-owner should bear, with interest thereon at ten per cent per annum from the date of such payments, and costs of the action, and the joint owner making such payment shall have a lien upon the undivided interests of his co-owners in and to such property from date of such payment. [L. '11, p. 478, § 62.]

§ 9416. [7892-63.] City or Town may Purchase at Tax Sales.

Whenever any property situate in any city or town shall be offered for sale for general taxes, the city or town within which such property is situate shall have power to protect the lien or liens of any local assessments outstanding against the whole or any portion of such property by purchase or otherwise. [L. '11, p. 479, § 63.]

§ 9417. [7892-64.] Proceedings in Case of Consolidated Cities.

The city council of any city which is composed of two or more cities or towns which have been or may hereafter be consolidated, as provided by law, shall have power to make and pass all necessary ordinances, orders and resolutions for any assessment where the improvement has been made or was being made by any such former city or town prior to the consolidation thereof, and to fully carry out and enforce the provisions of this act. [L. '11, p. 479, § 64.]

§ 9418. [7892-65.] Assessments Paid in Error.

Whenever, through error or inadvertence, any person shall pay any local assessment, or installment thereof, upon the lands of another, such payor may, after demand and refusal, by an action in the superior court, recover from the owner of such lands the amount so paid, and costs of the action. [L. '11, p. 479, § 65.]

§ 9419. [7892-66.] Vote Required on Ordinances.

No ordinances mentioned in this act shall be considered passed unless they shall have received the affirmative vote of at least a majority of the members of the council or other legislative body of such city or town: Provided, that in cities of the first class the vote required for the passage of any such ordinances shall be subject to such further limitations as may be prescribed in the charter of any such city: Provided, that in any city or town, other than cities of the first class, no ordinance providing for any improvement herein authorized shall be effective over the written objection or objections of the owners of a majority of the lineal frontage and of the area within the limits of the proposed improvement district filed with the clerk of any such city or town prior to the final passage of such ordinance unless such ordinance shall receive the affirmative vote of at least two-thirds of all the members of the council or other legislative body of such city or town. [L. '11, p. 479, § 66.]

Cited in 85 Wash. 4.

Under this section it is not necessary for the council to take direct action upon the remonstrance, since the passage of the ordinance by a two-thirds vote subse-

quent to a hearing of the remonstrance is practically a rejection thereof and a passage of the ordinance by the required vote: Buck v. Monroe, 85 Wash. 1, 147 Pac. 432.

§ 9420. [7892-67.] Act to Apply to All Cities and Towns.

The provisions of this act shall apply to all incorporated cities and towns in this state, including unclassified cities and towns operating under special charters. [L. '11, p. 480, § 67.]

Cited in 80 Wash. 289; 81 Wash. 515.

§ 9421. [7892-68.] Word "Council" and "Mayor" Construed.

Whenever the words city council or town council are used in this act, they shall be construed to mean the council or other legislative body of such city or town. Whenever the word mayor is used in this act, it shall be construed to mean the presiding officer of said city or town. [L. '11, p. 480, § 68.]

§ 9422. [7892-69.] Act to be Liberally Construed.

The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act, but the same shall be liberally construed for the purpose of carrying out the objects for which this act is intended. [L. '11, p. 480, § 69.]

Cited in 85 Wash. 4.

In making local improvements, the general rule that a city must follow the letter of the law, construed strictly

against the city does not obtain, in view of this section: Buck v. Monroe, 85 Wash. 1, 147 Pac. 432.

§ 9423. [7892-70.] Saving Clause.

Any acts or parts of acts herein repealed, which are re-enacted in form or in substance in this act shall not be construed as new enactments but as continuations and amendments of such acts or parts of acts.

All rights of action under existing laws which this act in any way supersedes or repeals, if the same at the time of taking effect of this act shall not have been commenced, shall proceed under the provisions of this

act. All actions and proceedings, which may be pending in court under existing laws which this act in any way supersedes or repeals, shall proceed without being in any manner affected by the passage of this act. All proceedings commenced by any city or town before the taking effect of this act, relating to the making of any local improvement, shall proceed without being in any manner affected by the passage of this act, except as provided in section 9376. [L. '11, p. 480, § 70.]

Cited in 84 Wash. 568; 85 Wash. 315; 91 Wash. 198; 97 Wash. 378; 98 Wash. 536, 537.

This act supersedes the prior acts whereby the property owners could obtain relief by an action in equity, and owners must now appeal or abide by the decision of the council where the act went into effect before the assessment-roll was made out, although the proceedings were commenced prior thereto under which the contract for the work was

made: Assessment for Local Improvement Sewer District No. 1 of Chehalis, In re, 84 Wash. 565, 147 Pac. 199.

By this section, the provisions relating to reassessments are not to be construed as a new enactment but as a continuing law: Kuehl v. Edmonds, 91 Wash. 195, 157 Pac. 850.

This section saves all pending proceedings: Richardson v. Seattle, 97 Wash. 371, 166 Pac. 639, 168 Pac. 513.

§ 9424. [7892-71.] Charters Suspended.

This act shall supersede the provisions of the charter of any city of the first class inconsistent herewith. [L. '11, p. 481, § 71.]

For acts repealed, see L. '11, p. 481, § 71.

Cited in 80 Wash. 289; 81 Wash. 515; 98 Wash. 536.

§ 9425. [7892-72.] Local Improvement Warrants Authorized.

Every city and town shall have the power by general ordinance to provide for the issuance of warrants in payment of the cost and expense of any local improvement, such warrants to be payable out of the special fund of such local improvement district, said warrants to bear interest from date thereof at a rate not to exceed eight per cent (8%) per annum, and to be redeemed either in cash or by local improvement bonds authorized to be issued in the manner prescribed by general ordinance.

All such warrants sold by the city or town, or issued to any contractor and by him sold or hypothecated for a valuable consideration, shall be claims and liens against the improvement fund against which they are drawn, prior and superior to any right, lien or claim of any surety upon any bond or bonds given to such city or town by or for the contractor to secure the performance of his contract or to secure the payment of persons who have performed work thereon, furnished materials therefor or provisions and supplies for the carrying on of the work. [L. '15, p. 529, § 3. Cf. L. '11, p. 482, § 72.]

Cited in 80 Wash. 287.

CHAPTER XXIII.

FILLING LOWLANDS, FIRST AND SECOND CLASS CITIES.

See, also, next chapter.

§ 9426. [7965] City Empowered to Fill Private Property.

Whenever any city of the first or second class shall establish or shall have established the grade of any street or streets, alley or alleys, at a higher elevation than any private property abutting thereon, thereby

rendering the drainage of such private property or any part thereof impracticable without the raising of the surface of such private property, or whenever the surface of any private property in any such city shall be so low as to make sanitary drainage thereof impracticable and it shall be determined by resolution of the city council of such city that a fill of such private property shall be necessary as a sanitary measure, such city shall have power to provide therefor as hereinafter set forth. [L. '07, p. 671, § 1.]

§ 9427. [7966.] Resolution of Council—Publication.

The city council shall, before establishing the new grade of such property or providing for such fill, first pass a resolution declaring its intention to make such improvement and giving in such resolution a description of the property proposed to be improved by such fill, the estimate of the cost of the same and stating that such cost is to be assessed against the property benefited thereby, and shall fix a time not less than thirty (30) days after the first publication of the said resolution as hereinafter specified within which protests against such proposed improvement may be filed in the office of the city clerk. Such resolution may, in the discretion of the council, include as many separate parcels of property as may seem desirable whether or not the same are contiguous, provided the same lie in the same general neighborhood and may conveniently be included in one local improvement district. It shall be the duty of the city clerk upon the passage of such resolution to cause such resolution to be published in the official newspaper of such city in at least two (2) consecutive issues before the time fixed in such resolution for filing such protests, and proof of such publication by affidavit shall be filed as a part of the record of such proceeding. [L. '07, p. 671, § 2.]

§ 9428. [7967.] Ordinance for Improvement—Assessment—Payment.

If no protest is filed, or if such protest is filed and the said city council shall, notwithstanding such protest and after full hearing thereof if any protestant shall ask for such hearing, determine that it is necessary to fill such private property, or any portion or portions thereof, the city council shall then, or at a subsequent time, proceed to enact an ordinance for such improvement. By the provisions of such ordinance, a local improvement district shall be established to be called "Local improvement district No. —," which shall include all the property found by the said council as aforesaid to require such fill as a sanitary measure. Such ordinance shall provide that such improvement shall be made and shall fix and establish the grades to which the said property and the different portions thereof shall be brought by such improvement, and that the cost and expense thereof shall be taxed and assessed upon all the property in such local improvement district, which cost shall be assessed in proportion to the number of cubic yards of earth and bulkheading required for the different portions of said property included in said improvement district and in proportion to the benefits derived by such improvement: Provided, that the city council may expend from the general fund for such purposes such sums as in their judgment may seem fair and equitable in consideration of the benefits accruing to the general public by reason of such im-

provement. Whenever any expense or cost of work shall have been assessed on any such land as hereinabove provided, the amount of such expense and cost shall become a lien upon said lands against which the same are so assessed and shall take precedence of all other liens, except general tax liens and special assessment liens theretofore assessed by the said city thereon and which may be foreclosed in accordance with the code of civil procedure in the name of such city as plaintiff. And in any such proceeding if the court trying the same shall be satisfied that the work has been done or material furnished for the fill of such property, a recovery shall be permitted or charge enforced to the extent of the proper proportion of the value of the work or material which would be chargeable on such lot or land notwithstanding any informality, irregularity or defects in any of the proceedings of such municipal incorporation or its officers. [L. '07, p. 672, § 3.]

§ 9429. [7968.] Powers of Council.

The said city shall have power by general or special ordinance, or by general and special ordinance combined, in its discretion, to make provision for the necessary surveys, estimates, bids, contract, bond and supervision of the said work and for making and approving the assessment-roll of said local improvement district and for the collection of the assessments made thereby, and for the doing of everything which in their discretion may be necessary in carrying out the purposes of this act, or may be incidental thereto: Provided, that before the approval of such assessment-roll, notice shall be given and an opportunity offered for the owners of the property affected by such assessment-roll to be heard before such city council in the same manner as in case of assessments for drainage and sewerage in any such city. [L. '07, p. 673, § 4.]

§ 9430. [7969.] Bonds—Issuance Authorized—Interest—Payment.

Such city may, in its discretion, by general or special ordinance, or both, instead of requiring immediate payment for the said work to be made by the owners of property included in said assessment-roll, authorize the issuance of interest-bearing bonds or warrants of such local improvement district, which shall include the property liable to assessment for such improvement, the said bonds or warrants to be payable on or before a date not to exceed twelve (12) years from and after their date and may be issued subject to call, the amount of the said assessment to be payable in installments or otherwise, and the bonds to be of such terms as shall be provided in said ordinance or ordinances and to bear interest at such rate as may be prescribed in such ordinance or ordinances, but not to exceed eight per cent (8%) per annum: Provided, that whenever the improvement shall lie wholly or partly within the boundaries of any commercial waterway district organized and existing under the provisions of chapter IX of Title LXI and the acts amendatory thereof, such bonds may be made payable on or before a date not to exceed twenty-two (22) years from and after the date of the issue of such bonds. Such bonds or warrants shall be payable only from the funds created by the special taxes or assessments hereinbefore authorized upon the property in

the said local improvement district, and the holder of any such bond or warrant shall look only to such fund for the payment of the principal and interest thereof and shall have no claim or lien therefor against the city by which the same was issued except from such fund. [L. '15, p. 265, § 1. Cf. L. '07, p. 673, § 5.]

"Chapter IX," see § 9724 et seq.

§ 9431. [7970.] Act Cumulative.

The provisions and remedies provided by this chapter are and shall be cumulative of existing provisions and remedies, and nothing in this chapter contained shall be held to repeal any provision of the existing law or of any charter of any city upon the subject matter thereof, but such existing law or charter provision shall continue in full force and effect, and it shall be optional with the city authorities to proceed under either such existing law, charter provision or this chapter. [L. '07, p. 674, § 6.]

Cited in 56 Wash. 50.

CHAPTER XXIV.

FILLING LOWLANDS, SECOND AND THIRD CLASS CITIES.

See, also, preceding chapter.

§ 9432. [7971.*] May Fill Lowlands—Special Assessments.

Whenever the city council of any city of the second and third class shall deem it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade or elevation of any marsh lands, swamp lands, tide lands, shore lands, or lands commonly known as tide flats, or any other lowlands situated within the limits of such city, and to clear and prepare said lands for such filling, such city council shall have power so to do and the expense thereof, including the cost of making compensation for property taken or damaged, and all other costs and expense incidental to such improvement, shall be assessed to the property benefited, except such amount of such expense as the city council, in its discretion, may direct to be paid out of the current or general expense fund: Provided, that if in the judgment of the city council the special benefits for any such improvement shall extend beyond the boundaries of the filled area, the council may create an enlarged district which shall include, as near as may be, all the property, whether actually filled or not, which will be specially benefited by such improvement, and in such case the council shall specify and describe the boundaries of such enlarged district in the ordinance providing for such improvement, and shall specify that such portion of the total cost and expense of such improvement as may not be borne by the current or general expense fund, shall be distributed and assessed against all the property of such enlarged district. Any proceedings for the creation of any such enlarged district heretofore established, or attempted to be established, are hereby validated. Proceedings for the filling and of changing the grade and elevation of any such lands may be had in the manner provided in this chapter. [L. '17, p. 222, § 1; L. '09, p. 569, § 1.]

Cited in 58 Wash. 550; 69 Wash. 31; 83 Wash. 316, 317, 639, 640, 641; 99 Wash. 269.

This chapter, for the filling of tide and swamp lands by cities, authorizes the assessment of property benefited thereby

situated within the assessment district, although it was not a part of the land filled in: *Martin v. Olympia*, 69 Wash. 28, 124 Pac. 214.

An ordinance for a local improvement by filling tide lands is not invalid by reason of a recital that one of its purposes was for the "general improvement of the property," where it also appears that it was necessary to the public health, sanitation and general welfare, within this section: *Martin v. Olympia*, 69 Wash. 28, 124 Pac. 214.

The title of this act, empowering cities "to fill lowlands . . . and for that purpose to exercise the right of eminent do-

main for the taking or damaging of property," is sufficiently broad to authorize the filling of lowland under the police power as a sanitary measure without making compensation for damages claimed to the property filled in; since the reference to the right of eminent domain applies to property taken or destroyed and not to land filled in, and the power "to fill" includes the right to exercise the police power: *Bowes v. Aberdeen*, 58 Wash. 535, 109 Pac. 369, 30 L. R. A. (N. S.) 709.

Power to fill lowlands at expense of owner. 30 L. R. A. (N. S.) 709.

§ 9433. [7972.] Improvement Provided for by Ordinance—Boundaries.

Whenever the city council of any such city shall desire to make any improvement contemplated in the next preceding section, such city council shall provide therefor by ordinance and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessments upon the property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter provided. Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement. Where any parcel of land within the boundaries of such proposed improvement district shall be wholly filled to the proposed grade elevation of the proposed fill, such parcel of land may be excluded from the lists of lands to be assessed, when in the opinion of the city council justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment as in this chapter provided, but such changing of the boundaries shall be by ordinance. [L. '09, p. 569, § 2.]

Cited in 75 Wash. 324.

Where part of a railroad right of way, included in a district of lowlands to be filled, had been partially filled by earth largely taken from the adjacent portion of the right of way, also included within the district, the company is not entitled to a deduction on account of such fill; even assuming that an equitable deduction "must" be made, under this section, or under section 9436, *infra*: *Northern Pac. R. Co. v. Raymond*, 75 Wash. 322, 134 Pac. 1047.

An assessment for the purpose of filling lowlands in cities of the second and third classes, under this act, cannot be attacked as beyond the jurisdiction of the council from the fact that it was not necessary for the public health or sanitation, where the record shows that the council did determine this question of its jurisdiction by finding the necessary facts to exist; since the question of necessity is, in the first instance, a legislative question, and conclusive on collateral attack: *Richardson v. Olympia*, 83 Wash. 638, 145 Pac. 963.

§ 9434. [7973.] Petition—Damages, Determined by Jury.

Whenever an ordinance shall be passed as in the preceding section of this chapter provided, and it shall appear that in making of such improvement so authorized, private property shall be taken or damaged thereby, the city shall file a petition in the superior court of the county in which

such city is situated, in the name of the city, praying that just compensation to be made for the property to be taken or damaged for the improvement specified in such ordinance, be ascertained by a jury or by the court, in case a jury be waived, and all of the provisions of an act of the legislature of the state of Washington, approved March 13, 1907, entitled, "An act to enable cities of the first, second and third classes and having a population of over one thousand five hundred inhabitants to exercise the right of eminent domain for the taking and damaging of land and property for public purposes, providing a method for making compensation therefor and providing for special assessments in certain cases upon property benefited," and acts amendatory thereof shall be applicable to the proceeding had in the superior court under the provisions of this chapter for the ascertainment of the compensation to be made for the taking and damaging of property, except in so far as the same may be consistent with this chapter. The filling of unimproved and uncultivated lowlands of the character mentioned in section 9432, shall not be considered as damaging or taking of such lands. The damage, if any, done to cultivated lands or growing crops thereon, or to building and other improvements situated within the district proposed to be filled, shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for buildings or improvements placed upon lands included within said district after the publication of the ordinance referred to in section 9433, defining the boundaries of the proposed improvement district: Provided, that the city shall after the passage of such ordinance, proceed with said improvement with due diligence. Where the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed without regard to benefits to the end that said property for which damages may be so awarded, may be assessed the same as other property within the district for its just share and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement as hereinafter provided. [L. '09, p. 570, § 3.]

Cited in 58 Wash. 563.

§ 9435. [7974.] Plans and Estimates—Approval by Council.

At the time of the initiation of the proceedings for any improvement as contemplated by this chapter, or at any time afterward, the city council of such city shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstracter's fees, interest, and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which plans, specifications and estimates shall be approved by the city council. [L. '09, p. 571, § 4.]

Cited in 58 Wash. 550; 83 Wash. 317.

The estimate of the cost of a local improvement, required by this section to be approved by the council on the initiation of the proceedings, is for the sole purpose of determining whether the council will initiate the improvement, and the assessment is not invalidated by the fact that

it greatly exceeds the estimate, where it did not exceed the actual bona fide or ultimate cost of the improvement, and can readily be accounted for by changed conditions, in view of § 9444, *infra*: Vincent v. South Bend, 83 Wash. 314, 145 Pac. 452.

§ 9436. [7975.*] **Assessment-roll—Installments.**

When such plans and specifications shall have been prepared and such estimate of the cost and expense of making such improvement shall be made and adopted by the council as set out in the preceding section, and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after such compensation shall be ascertained in the said superior court as hereinbefore provided, the city council through the proper officer or officers, of such city, shall cause an assessment-roll to be prepared containing a list of all of the property within such improvement district which it is proposed to assess for such improvement, together with the names of the owners, if known, and if unknown the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description. When so ordered by the council, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings and together with the entire cost and expense of making the improvement, may be assessed against the property within the district subject to assessment, but the council may order any portion of such costs paid out of the current or general expense fund of the city, in their discretion. The several parcels of land located within said improvement district to be assessed for such improvement which are actually filled shall be assessed according to and in proportion to surface area, a square foot of surface to be the unit of assessment, and the several parcels of land in any enlarged district not actually filled shall be assessed in accordance with special benefits: Provided, that where any parcel of land was partially filled by the owner prior to the initiation of the improvement and equitable deduction for such partial filling may be allowed. The cost and expense incidental to the filling of the streets, alleys and public places within such assessment district shall be borne by the private property within such district subject to assessment when so ordered by the council. When the assessment shall be payable in installments, the assessment-roll when equalized, as hereinafter provided, shall show the number of installments and the amounts thereof. The assessment herein provided may be made payable in any number of equal annual installments not exceeding ten (10) in number. [L. '17, p. 223, § 2; L. '09, p. 572, § 5.]

Cited in 58 Wash. 538, 547, 550; 75 Wash. 324.

An assessment upon the property to pay for the cost of filling lowlands "in proportion to the surface area," as authorized by this section, is not unreasonable or arbitrary, because not made according to benefits or in proportion to the value of the property; nor is the same void as authorizing unequal taxa-

tion, in violation of the Constitution requiring property to be taxed according to its value, as that clause of the Constitution does not apply to special assessments: Bowes v. Aberdeen, 58 Wash. 535, 109 Pac. 369, 30 L. R. A. (N. S.) 709.

A city may, by virtue of the police power, in a proper case, and when necessary to the public welfare, irrespective of the right of eminent domain, fill in

lowlands that are unsanitary and a menace to health, without rendering compensation for damages claimed to private property filled in; and under this section may assess the property to pay the cost

of the work, providing the exercise of the power is not unjust or arbitrary: *Bowes v. Aberdeen*, 58 Wash. 535, 109 Pac. 369, 30 L. R. A. (N. S.) 709.

§ 9437. [7976.] Hearing on Assessment—Notice by Publication.

When such assessment-roll shall be so prepared it shall be filed in the office of the city clerk and thereupon it shall be the duty of the city clerk to give notice by publication in at least three issues of the official paper that such roll is on file in his office and that at a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council of such city will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same. At the time specified in said notice, the city council of said city shall sit as a board of equalization to equalize the said roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council shall have power as such board of equalization to hear, consider and determine objections and protests against any assessment levied under the provisions of this chapter and shall have power as such board to make such alterations and modifications in the assessment-roll as justice and equity may require. [L. '09, p. 573, § 6.]

Cited in 69 Wash. 33.

Under this and the next section, giving the right of appeal from a city assessment for filling tide and swamp lands to any person filing objections before the city council, sitting as a board of equalization, the action of the city council is final as to all persons not objecting, in the absence of fraud or arbitrary action;

hence a complaint to set aside an assessment by one who made no objections is insufficient where it alleges merely that the property was not benefited, without alleging any irregularity or any facts showing capricious or arbitrary action: *Martin v. Olympia*, 69 Wash. 28, 124 Pac. 214.

§ 9438. [7977.] Appeals to Superior Court.

Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council to the superior court of the county in which such city may be situated. Such appeal shall be made by filing a written notice of appeal with the clerk of such city within ten days after the equalization of said assessment by the council, and said notice shall describe the property and the objections of such appellant to such assessment; and the appellant shall also file with the clerk of the superior court aforesaid within ten (10) days from the time of taking such appeal a copy of said notice, appeal, assessment and proceedings thereon, certified by the clerk of such city, together with a bond to such city conditioned to pay all costs that may be awarded against appellant in such sums not less than two hundred dollars and with such security as shall be approved by the clerk of such court, and the case shall be docketed by the clerk of such court in the name of the person taking such appeal as plaintiff and such city or town as defendant. Said cause shall then be at issue and shall be tried immediately by such court as in the case of equitable causes, except that no further pleadings shall be necessary. The judgment of the

court shall be either to confirm, modify or annul the assessment in so far as the same affects the property of the appellant, with respect to which the appeal was taken, from which judgment and appeal shall lie to the supreme court as in other causes. [L. '09, p. 573, § 7.]

Cited in 69 Wash. 33.

§ 9439. [7978.] Lien Attaches, When—Collection.

From and after the equalization of the roll, the several assessments in such roll contained shall become a lien upon the real estate described in such roll and shall remain such lien until paid, and such lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments herein provided for shall be collected by the same officers and enforced in the same manner as now provided by law or which may be hereafter enacted for the collection and enforcement of local assessments for street improvements in cities of the class herein described, and all of the provisions of existing laws and ordinances relative to the enforcement and collection of local assessments for street improvements, including the certification of delinquent assessments to the county treasurer and the issuance and foreclosure of certificates of delinquency, shall be applicable to the assessments made pursuant to this chapter. [L. '09, p. 574, § 8.]

§ 9440. [7979.] Payment by Warrants—Issuance of Bonds.

When the improvement contemplated by this chapter shall be ordered to be made upon the immediate payment plan, the city council shall provide for the payment of the same by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district. When such improvement shall be ordered to be made upon the bond installment plan, the city council shall provide for the issuance of bonds against the improvement district as hereinafter provided. [L. '09, p. 574, § 9.]

§ 9441. [7980.] Bonds—Interest, Maturity, Guaranties.

When it is desired to issue bonds against any such improvement district, the city council shall have full authority to provide for the issuance of such bonds. Such bonds may be in such denominations as the city council may provide and shall bear such rate of interest as the city council may fix, not exceeding, however, eight per centum per annum; interest shall be paid annually and said bonds shall become due and payable at such time, not exceeding ten years from the date thereof, as may be fixed by the council and shall be payable out of said local assessment district funds. If so ordered by the council, such bonds may be issued in such a way that different numbers of said bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district shall mature together. The city council of any such city shall have authority for and on behalf of such city to guarantee the payment of the whole or any part of the bonds so issued against any such local improvement district, but such

guaranties on the part of the city shall only be made by ordinance duly enacted, the passage of which ordinance shall require the vote of not less than nine councilmen and the approval of the mayor of cities of the second class, and six councilmen and approval of the mayor in cities of the third class. The city council shall have power to enact all ordinances necessary for the issuance of the bonds herein provided for, and to give full force and effect to this chapter. [L. '09, p. 574, § 10.]

§ 9442. [7981.] Preliminary Expense.

The city council of any such city shall have power to negotiate sufficient warrants or bonds against any such local improvement district at a price not less than ninety-five per cent of their par value as may be necessary to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the judicial proceedings hereinbefore mentioned, including the costs of such proceedings; but in lieu of so doing, the city council shall have power to negotiate current or general expense fund warrants at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds. [L. '09, p. 575, § 11.]

§ 9443. [7982.] Interest on Assessments and Warrants.

The local assessments herein provided for shall bear interest at such rate as may be fixed by the council, not exceeding the rate of eight per centum per annum from and after the expiration of thirty days after the equalization of the assessment-roll and shall bear such interest after delinquency as may be provided by general ordinance of the city: Provided, that such assessment shall bear interest at the rate of fifteen per cent per annum from and after the date of the certification of such assessments to the county treasurer of the county, as in cases of local street assessments. Warrants drawn against any such local improvement district shall bear interest from the date of issuance at the rate of eight per centum per annum. [L. '09, p. 576, § 12.]

§ 9444. [7983.] When Contract Let—Change of Roll.

The contract for the making of any improvement as contemplated by this chapter may be let either before or after the making up of the equalization of the assessment-roll, and special fund warrants, or bonds may be issued against said local improvement district, either before or after the equalization of the roll as in the judgment of the council may best subserve the public interest. When the assessment-roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement and it shall be later found that such estimate was too high, the excess shall be rebated pro rata to the property owners on the assessment-roll, such rebates to be deducted from the last installment, or installments, when the assessment is upon the installment plan. When it is found that the estimated cost was too low and that

the actual bona fide cost of the improvement is greater than the estimate, the city council, after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment-roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included, except that such additional amount shall be added to the last installment of such assessment in case such assessment be upon the installment plan. The same notice shall be required for adding to the assessment-roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal. [L. '09, p. 576, § 13.]

Cited in 83 Wash. 317.

§ 9445. [7984.] Warrants or Bonds in Payment of Contracts.

The city council in its discretion may provide in letting the contract for any such improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of such work, and that such warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council may negotiate such special fund warrants or bonds against such local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds of such sales pay the contractor for such work and pay the other costs of such improvement. [L. '09, p. 577, § 14.]

§ 9446. [7985.] Funds may be Invested.

Whenever moneys shall accumulate in any such improvement fund and is likely to lay idle awaiting the maturity of the bonds against the district, the city council, under proper safeguards, may invest such money temporarily, or may borrow the same temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the moneys so invested or borrowed from any such fund, with interest thereon, whenever required for the redemption of bonds maturing against such district. [L. '09, p. 577, § 15.]

§ 9447. [7986.] Reassessment.

In case any assessment made under the provisions of this act should be found to be invalid for any cause or in case the same should be set aside for any reason in any judicial proceeding, then a reassessment may be made and all laws now in force, or which may be hereafter enacted relative to the reassessment of local assessments, for street or other improvements, shall, as far as practicable, be applicable hereto. [L. '09, p. 577, § 16.]

§ 9448. [7987.] Act Concurrent.

This chapter shall not be construed as repealing or in any wise affecting any existing laws relative to the making of any such improve-

ments, as are embraced within this chapter, but this chapter shall be considered as concurrent with such existing laws. [L. '09, p. 577, § 17.]

§ 9449. [7987-1.] Lowlands and Waterways—Assessments for Benefits.

Whenever the city council or commission of any city of the second or third class in this state shall deem it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade or elevation of any marsh lands, swamp lands, tide lands or lands commonly known as tide flats, or any other lands situated within the limits of such city and to clear and prepare said lands for such filling, such city shall have power so to do; and for the purpose of filling and raising the grade or elevation of such lands, and to secure material therefor and to provide for the proper drainage thereof after such fill has been effected, the city council or commission of such city may, if it deems it advisable so to do, acquire rights of way (and where necessary or desirable, may vacate, use and appropriate streets and alleys for such purposes) and lay out, build, construct and maintain over and across such lowlands, canals or artificial waterways of at least sufficient width, depth and length to provide and afford the quantity of earth, dirt and material required to complete such fill and with the earth, dirt and material removed in digging and constructing such canals and waterways, fill and raise the grade or elevation of such marsh lands, swamp lands, tide-lands or tide flats; and such canals or waterways shall be constructed of such width and depth (provided that all the earth, dirt and other suitable material removed in constructing the same shall be used to fill the lowlands as herein provided) as will make them available, convenient and suitable to provide water frontage for landings, wharves and other conveniences of navigation and commerce for the use and benefit of the city and the public; and when such canals or waterways shall have been constructed as herein provided, such city may construct and maintain the necessary bridges over and across the same; such canals or waterways shall be forever under the control of such city and shall be and become public thoroughfares and waterways for the use and benefit of commerce, shipping, the city and the public generally. The expense of making such improvement and in doing, accomplishing and effecting all the work provided for in this act, including the cost of making compensation for property taken or damaged, and all other cost and expense incidental to such improvement, shall be assessed to the property benefited, except such amount of such expense as the city council or commission, in its discretion, may direct to be paid out of the current or general expense fund. Proceedings for the filling and for changing the grade and elevation of any such lowlands may be had in the manner provided in this act. [L. '13, p. 30, § 1.]

§ 9450. [7987-2.] Funds Applicable—Lands Excluded—Protests—Notice—Vote.

Whenever the city council or commission of any such city shall desire to make any improvement contemplated in the next preceding section, such city council or commission shall provide therefor by ordinance and

unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon the property benefited, compensation therefor shall be made from any general or special funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of such special assessment shall be as hereafter provided. Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement, and shall provide for the filling of such lowlands and shall outline the general scheme or plan of such fill. Where any parcel of land within the boundaries of such proposed improvement district shall, prior to the initiation of the improvement, be wholly filled to the proposed grade or elevation of the proposed fill, such parcel of land may be excluded from the lands to be assessed when in the opinion of the city council or commission justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment as in this act provided, but such changing of the boundaries shall be by ordinance. Upon the introduction of an ordinance providing for such fill, if the city council or commission shall desire to proceed with the filling of such lowlands as in this act contemplated, said city council or commission shall fix a time, not less than ten days, in which protests against said fill may be filed in the office of the city clerk. Thereupon it shall be the duty of the clerk of said city to publish in the official newspaper of said city in at least two consecutive issues thereof before the time fixed for the filing of such protests, a notice of the time fixed for the filing of protests, together with a copy of the proposed ordinance as introduced. If protests against the proposed fill by the owners of more than half of the area of land situated within the proposed filling district exclusive of streets, alleys and public places, be filed on or before the date fixed for such filing, the council shall not proceed further with such work unless two-thirds of the members of the said council shall vote to proceed with such work, and if any such city is operating under the commission form of government composed of three commissioners, said commission shall not proceed further with such work except by a unanimous affirmative vote of all the members thereof; if such commission be composed of five members, then at least four affirmative votes thereof shall be necessary before proceeding with such work. If no such protest shall be filed or if such protest be filed and two-thirds of the councilmen shall vote to proceed with such work or in cases where such cities are operating under the commission form of government, such commissioners shall vote unanimously or four out of five commissioners as above mentioned shall vote to proceed with such work, the said city council or commission shall at such meeting or in a succeeding meeting proceed to pass the proposed ordinance for the work, with such amendments and modifications as to the said city council or commission of said city may seem proper. By the provisions of such ordinance the local improvement district shall be called "Filling District No. —" which shall include all property subject to assessment, and which

it may be proposed to assess, and which may be properly included under the provisions of this act. [L. '13, p. 32, § 2.]

§ 9451. [7987-3.] Eminent Domain—Fill not Damage—Benefits not Considered.

Whenever an ordinance shall be passed as in the preceding section of this act provided, and it shall appear, that in making of such improvements so authorized, private property shall be taken or damaged thereby, the city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation to be made for the property to be taken or damaged for the improvement specified in such ordinance, be ascertained by a jury or by the court, in case a jury be waived, and all of the provisions of sections 9215 to 9280, and acts amendatory thereof shall be applicable to the proceeding had in the superior court under the provisions of this act for the ascertainment of the compensation to be made for the taking and damaging of property, except in so far as the same may be inconsistent with this act. The filling of unimproved and uncultivated lowlands of the character mentioned in section 9449 shall not be considered as a damaging or taking of such lands. The damage, if any, done to cultivated lands or growing crops thereon, or to buildings and other improvements situated within the district proposed to be filled, shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for buildings or improvements placed upon lands included within said district after the publication of the ordinance referred to in section 9450, defining the boundaries of the proposed improvement district: Provided, that the city shall after the passage of such ordinance, proceed with said improvement with due diligence. Where the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed without regard to benefits to the end that said property for which damages may be so awarded, may be assessed the same as other property within the district for its just share, and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement as hereinafter provided. [L. '13, p. 34, § 3.]

§ 9452. [7987-4.] Plans—Estimate.

At the time of the initiation of the proceedings for any improvement as contemplated by this act or at any time afterward, the city council or commission of such city shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstractor's fees, interest and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which

plans, specifications and estimates shall be approved by the city council or commission. [L. '13, p. 35, § 4.]

§ 9453. [7987-5.] Assessment-roll.

When such plans and specifications shall have been prepared and such estimate of the cost and expense of making such improvement shall be made and adopted by the city council or commission, as set out in the preceding section, and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after such compensation shall be ascertained in the said superior court as hereinbefore provided, the city council or commission through the proper officer or officers, of such city, shall cause an assessment-roll to be prepared containing a list of all the property within said improvement district which it is proposed to assess for such improvements, together with the names of the owners, if known, and if unknown, the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description. When so ordered by the said city council or commission, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings and together with the entire cost and expense of making the improvement may be assessed against the property within the district subject to assessment, but the city council or commission may order any portion of such costs paid out of the current or general expense fund of the city, in their discretion. The several parcels of land located within said improvement district to be assessed for such improvement shall be assessed according to and in proportion to surface area, one square foot of surface to be the unit of assessment: Provided, that where any parcel of land was wholly or partially filled by the owner prior to the initiation of the improvement an equitable deduction for such filling or partial filling may be allowed. The cost and expense incidental to the filling of the streets, alleys and public places within said assessment district shall be borne by the private property within such district subject to assessment when so ordered by the city council or commission. When the assessment shall be payable in installments, the assessment-roll when equalized, as hereinafter provided, shall show the number of installments and the amounts thereof. The assessment herein provided may be made payable in any number of equal annual installments not exceeding fifteen in number. [L. '13, p. 35, § 5.]

§ 9454. [7987-6.] Notice and Hearing of Protests.

When such assessment-roll shall be so prepared it shall be filed in the office of the city clerk and thereupon it shall be the duty of the city clerk to give notice by publication in at least three issues of the official paper that such roll is on file in his office and that a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council or commission of such city will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same. At the time specified in said notice, the city council or commission of said city shall sit as

a board of equalization to equalize the said roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council or commission shall have power as such board of equalization to hear, consider and determine objections and protests against any assessment levied under the provisions of this act and shall have power as such board to make such alterations and modifications in the assessment-roll as justice and equity may require. [L. '13, p. 36, § 6.]

§ 9455. [7987-7.] Appeals to Superior Court—Judgment.

Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council or commission to the superior court of the county in which such city may be situated. Such appeal shall be made by filing a written notice of appeal with the clerk of such city within ten days after the equalization of said assessment by the council or commission, and said notice shall describe the property and the objections of such appellant to such assessment; and the appellant shall also file with the clerk of the superior court aforesaid within ten (10) days from the time of taking such appeal a copy of said notice, appeal, assessment and proceedings thereon, certified by the clerk of such city, together with a bond to such city conditioned to pay all costs that may be awarded against appellant in such sums not less than two hundred dollars, and with such security as shall be approved by the clerk of such court, and the case shall be docketed by the clerk of such court in the name of the person taking such appeal as plaintiff, and such city or town as defendant. Said cause shall then be at issue and shall be tried immediately by such court as in the case of equitable causes, except that no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment in so far as the same affects the property of the appellant with respect to which the appeal was taken, from which judgment an appeal shall lie to the supreme court as in other causes. [L. '13, p. 37, § 7.]

§ 9456. [7987-8.] Assessments—How Collected.

From and after the equalization of the roll, the several assessments in such roll contained shall become a lien upon the real estate described in such roll, and shall remain such lien until paid, and such lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments herein provided for shall be collected by the same officers and enforced in the same manner as now provided by law or which may be hereafter enacted for the collection and enforcement of local assessments for street improvements of the class herein described, and all of the provisions of existing laws and ordinances relative to the enforcement and collection of local assessments for street improvements including the certification of delinquent assessments to the county treasurer and the issuance and foreclosure of certificates of delinquency, shall be applicable to the assessments made pursuant to this act. [L. '13, p. 38, § 8.]

§ 9457. [7987-9.] Immediate Payment Plan.

When the improvement contemplated by this act shall be ordained to be made upon the immediate payment plan, the city council or commission shall provide for the payment of the same by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district. When such improvement shall be ordered to be made upon the bond installment plan, the city council or commission shall provide for the issuance of bonds against the improvement district as hereinafter provided. [L. '13, p. 38, § 9.]

§ 9458. [7987-10.] Bonds—Guaranty.

When it is decided to issue bonds against any such improvement district, the city council or commission shall have full authority to provide for the issuance of such bonds. Such bonds may be in such denominations as the city council or commission may provide, and shall bear such rate of interest as the city council or commission may fix, not exceeding, however, eight per centum per annum; interest shall be paid annually and said bonds shall become due and payable at such time, not exceeding fifteen years from the date thereof, as may be fixed by the said council or commission and shall be payable out of said local assessment district funds. If so ordered by the council or commission, such bonds may be issued in such a way that different numbers of said bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district shall mature together. The city, however, may reserve the right to call or mature any bond on any interest-paying date when sufficient funds are on hand for its redemption; but bonds shall be called in numerical order. The city council or commission of any such city shall have authority for and on behalf of such city to guarantee the payment of the whole or any part of the bonds so issued against any such local improvement district, but such guaranties on the part of the city shall only be made by ordinance duly enacted, the passage of which ordinance shall require the vote of not less than two-thirds of the councilmen and the approval of the mayor, or three commissioners in case the governing body consists of three commissioners, or four where such city is governed by five commissioners. The city council or commission shall have power to enact all ordinances necessary for the issuance of the bonds herein provided for, and to give full force and effect to this act. [L. '13, p. 38, § 10.]

§ 9459. [7987-11.] Minimum Price of Bonds.

The city council or commission of any such city shall have power to negotiate sufficient warrants or bonds against any such local improvement district at a price not less than ninety-five per cent of their par value as may be necessary to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the judicial proceedings hereinbefore mentioned, including the costs of such proceedings; but in lieu of so doing, the city council or commission shall have power to negotiate current or general expense fund warrants

at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds. [L. '13, p. 39, § 11.]

§ 9460. [7987-12.] Interest.

The local assessments herein provided for shall bear interest at such rate as may be fixed by the council or commission, not exceeding the rate of eight per centum per annum from and after the expiration of thirty days after the equalization of the assessment-roll and shall bear such interest after delinquency as may be provided by general ordinance of the city: Provided, that such assessment shall bear interest at the rate of fifteen per cent per annum from and after the date of the certification of such assessments to the county treasurer of the county, as in cases of local street assessments. Warrants drawn against any such local improvement district shall bear interest from the date of issuance at the rate of eight per centum per annum. [L. '13, p. 40, § 12.]

§ 9461. [7987-13.] Contract—Rebates—Supplemental Assessment.

The contract for the making of any improvement as contemplated by this act may be let either before or after the making up of the equalization of the assessment-roll, and special fund warrants or bonds may be issued against said local improvement district, either before or after the equalization of the roll as in the judgment of the council or commission may best subserve the public interest. When the assessment-roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement and it shall be later found that such estimate was too high, the excess shall be rebated pro rata to the property owners on the assessment-roll, such rebates to be deducted from the last installment, or installments, when the assessment is upon the installment plan. When it is found that the estimated cost was too low and that the actual bona fide cost of the improvement is greater than the estimate, the city council or commission after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment-roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included, except that such additional amount shall be added to the last installment of such assessment in case such assessment be upon the installment plan. The same notice shall be required for adding to the assessment-roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal. [L. '13, p. 40, § 13.]

§ 9462. [7987-14.] Contractor to Accept Bonds or Warrants.

The city council or commission in its discretion may provide in letting the contract for any such improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of such work, and that such

warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council or commission may negotiate such special fund warrants or bonds against such local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds of such sales pay the contractor for such work and pay the other costs of such improvement. [L. '13, p. 41, § 14.]

§ 9463. [7987-15.] Surplus Funds Invested.

Whenever money shall accumulate in any such improvement fund and is likely to lay idle awaiting the maturity of the bonds against the district, the city council or commission, under proper safeguards, may invest such money temporarily, or may borrow the same temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the moneys so invested or borrowed from any such fund, with interest thereon, whenever required for the redemption of bonds maturing against such district. [L. '13, p. 41, § 15.]

§ 9464. [7987-16.] Reassessments.

In case any assessment made under the provisions of this act should be found to be invalid for any cause or in case the same should be set aside for any reason in any judicial proceeding, then a reassessment may be made and all laws now in force or which may be hereafter enacted relative to the reassessment of local assessments, for street or other improvements, shall, as far as practical, be applicable hereto. [L. '13, p. 41, § 16.]

§ 9465. [7987-17.] Waterways—Construction of—Contract.

When the filling of any marsh land, swamp land, tide land or tide flats shall result in the construction and completion of any canal or waterway as contemplated in this act, the same shall not be constructed less than three hundred feet wide at the top between the shore lines and with sufficient slope to the sides or banks thereof to as nearly as practicable render bulkheadings or other protection against caving or falling in of said sides or banks unnecessary and of sufficient depth to meet all ordinary requirements of navigation and commerce. Such canal or waterway shall be and remain under the control of the city except as herein provided, and immediately upon the completion of the same the city shall establish outer wharf and dock lines lengthwise of said canal or waterway on both sides thereof in such manner and position that not less than two hundred feet of the width thereof shall always remain open between such lines and beyond and between which lines no right shall ever be granted to build docks, wharves or other obstructions except bridges; nor shall any permanent obstruction to the free use of the channel so laid out between said wharf or dock lines, excepting bridges, their approaches, piers, abutments and spans, ever be permitted but the same shall be kept open for navigation. Such city shall have the right to lease the area so created between the said shore lines and the wharf and dock lines so established or any part, parts or parcels thereof during times when the use thereof is not required

by the city, for periods not exceeding thirty years, to private individuals or concerns for dock, wharf, warehouse or manufacturing purposes at such annual rate or rental per lineal foot of frontage on the canal or waterway as it may deem reasonable. The rates of wharfage, dockage and other charges to the public which such lessee may impose shall be reasonable; and the city council or commission may regulate such rates. The lease so granted by the city shall never be transferred or assigned without the consent of the city council or commission having been first obtained; and when at the time of granting such leases the city shall own the land abutting upon the shore line and outside of such canal or waterway at any given point then the said area lying between the shore line and the said wharf or dock line at that point shall never be leased unless an equal frontage of said abutting property immediately adjoining the same is leased at the same time for the same period to the same individual or concern: Provided, that such city shall never lease to any individual or concern more than four hundred (400) lineal feet of frontage of such area lying between the shore lines and the wharf or dock lines and no individual or concern shall ever hold or occupy by lease, sublease or otherwise more than the said four hundred (400) lineal feet of frontage of such area: Provided, however, that any individual or concern may acquire by lease or sublease whatever additional number of lineal feet of frontage of such area may in the judgment of the city council or commission be necessary for the use of such individual or concern, upon petition therefor to the city council or commission signed by not less than five hundred (500) resident freeholders of said city. [L. '13, p. 42, § 17.]

§ 9466. [7987-18.] Acquisition of Abutting Lands—Lease of Dock Sites.

While acquiring the rights of way for such canals or waterways or at any time thereafter such city shall have the right to acquire for its own and for public use, by purchase, gift, condemnation or otherwise, and pay therefor out of the current expense fund of such city or by bonding the city or by pledging revenues to be derived from rents and issues of the lands so acquired or through such other means as may be provided by law, lands abutting upon the shore lines or right of way of such canals or waterways to a distance, depth or width of not more than three hundred (300) feet back from the banks or shore lines of such canals or waterways on either side or both sides thereof, or not more than three hundred (300) lineal feet back from and abutting on the outer lines of such rights of way on either side or both sides of such rights of way, and such area of such abutting lands as the council or commission may deem necessary for its use for public docks, bridges, wharves, streets and other conveniences of navigation and commerce and for its own use and benefit generally; and when the said cities are not using said lands they shall have the right to lease the said abutting lands so acquired or such parts or parcels thereof as may be deemed for the best interest and convenience of navigation, commerce and the public interest and welfare to private individuals or concerns for terms not exceeding thirty years each at such annual rate or rental as the city council or commission of such city may deem just, proper and fair, for the purpose of erecting docks and wharves for wholesale and retail warehouses and for general commercial purposes

and manufacturing sites, but the said city shall never convey or part with title or control of the abutting lands above mentioned and so acquired other than in the manner herein specified: Provided, that any lease or leases granted by such city on such abutting lands shall never be transferred or assigned without the consent of the city council or commission having been first obtained. And such city shall never lease to any individual or concern more than four hundred (400) lineal feet of canal or waterway frontage of said land and no individual or concern shall ever hold or occupy by lease, sublease, or otherwise more than the said four hundred (400) lineal feet of said frontage: Provided, however, that any individual or concern may acquire by lease or sublease whatever additional frontage of such abutting land may be in the judgment of the city council or commission necessary for the use of such individual or concern, upon petition presented to the city council or commission therefor signed by not less than five hundred (500) resident freeholders of such city; and at the time that the city shall lease to any individual or concern any of such abutting lands such individual or concern must likewise for the same period of time lease all of the area between the shore line and wharf and dock line of such canal or waterway lying contiguous to and immediately in front of the abutting land so leased. [L. '13, p. 43, § 18.]

§ 9467. [7987-19.] Tax Levy—Special Fund.

For the purpose of raising revenues to carry on any project under this act, excepting the actual filling of such marsh lands, lowlands, swamp lands, tide lands or tide flats, but including funds for the payment for the lands taken, purchased, acquired or condemned and the expenses incident to the acquiring thereof, or any other cost or expenses incurred by the city under this act other than the cost of actually filling such lands, any such city is hereby empowered and authorized to levy an annual tax of not exceeding three (3) mills on each dollar of assessed valuation of all property within the city. The city council or commission of any such city may create a fund into which all moneys so derived from taxation and moneys derived from rents and issues of the lands acquired under and by virtue of this act shall be paid and against which special fund warrants may be drawn or negotiable bonds issued to meet expenditures under this act. [L. '13, p. 45, § 19.]

§ 9468. [7987-20.] Work Done by Contract—Day Labor.

When such city shall undertake any improvement authorized by this act and the expenditures required for the same exceed the sum of five hundred dollars, the same shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulation as may be prescribed by ordinance: Provided, that the city council or commission may reject all bids presented and readvertise in their discretion, or, if in the judgment of the city council or commission such work can be performed, or supplies or materials furnished by the city independent of contract, cheaper than under the bid submitted, it may after having so advertised and examined the bids, cause such work to be performed or supplies or materials to be furnished independent of contract.

This section shall be construed as a concurrent and cumulative power conferred on such cities and shall not be construed as in any wise repealing or affecting any law now in force relating to the performing, execution and construction of public works. [L. '13, p. 45, § 20.]

§ 9469. [7987-21.] Eminent Domain—Lands Outside City.

The right of eminent domain is hereby extended to any such city of the second or third class for the condemnation of lands and other property, either within or without the corporate limits of such city, for the purpose of filling and draining such marsh lands, swamp lands, lowlands, tide lands, or tide flats and in so doing constructing said canals or waterways as contemplated in this act; and every such city shall have the right to appropriate real estate or other property for the rights of way of such canals or waterways or whatever property is necessary to be appropriated or damaged for the construction thereof, and the filling and draining of such marsh lands, lowlands, swamp lands, tide lands or tide flats and for other uses provided for in this act; and all the provisions of sections 9215 to 9280, and acts amendatory thereof shall be applicable and used in appropriating and damaging lands as contemplated by this section except in so far as the same may be inconsistent with this act; and the right of eminent domain authorized by this section shall be exercised in the same manner and under the same procedure as is authorized by said sections 9215 to 9280, and acts amendatory thereof. [L. '13, p. 45, § 21.]

§ 9470. [7987-22.] Act Concurrent.

This act shall not be construed as repealing or in any wise affecting sections 9432 to 9448, or any other existing laws relative to the making of any such improvements as are embraced within this act, but this act shall be considered as concurrent with such existing laws. [L. '13, p. 46, § 22.]

CHAPTER XXV.

LIENS FOR WATER AND LIGHT CHARGES.

§ 9471. [7988.] Liens for Unpaid Charges.

Cities owning their own waterworks, electric light or power plants, are hereby granted a lien for delinquent and unpaid charges for water or electric light or power, against the premises to which the same has been furnished. [L. '09, p. 617, § 1.]

§ 9472. [7989.] Enforcement of Lien.

Said lien may be enforced by cities only by cutting off water or electric light or power against the premises to which the same has been furnished, after the charges become delinquent and unpaid, until such charges are paid. In the event of a disputed account, and tender by the owner of the premises of the amount claimed by him to be due prior to the city discontinuing such a service, the right to so refuse service to any premises shall not accrue until suit has been entered by the city, and judgment entered in such case. [L. '09, p. 617, § 2.]

CHAPTER XXVI.

PROTECTION OF WATER SUPPLY.

§ 9473. [7990.] Protection of Water Supply.

For the purpose of protecting the water furnished to the inhabitants of towns and cities within this state from pollution, the said towns and cities are hereby given jurisdiction over all property occupied by the works, reservoirs, systems, springs, branches and pipes, by means of which, and of all the lakes, rivers, springs, streams, creeks or tributaries constituting the sources of supply from which such cities or towns or the companies or individuals furnishing water to the inhabitants of such cities or towns obtain their supply of water, or store or conduct the same, and over all property acquired for any of the foregoing works or purposes or for the preservation and protection of the purity of the water supply, and over all property within the areas draining into the lakes, rivers, springs, streams, creeks or tributaries constituting such sources of supply whether the same, or any thereof, be within the corporate limits of such town or city or outside thereof; and authority is hereby conferred upon such towns and cities to prescribe by ordinance what acts shall constitute offenses against the purity of such water supply and the punishment or penalties therefor and to enforce said ordinances; and the mayor of such town or city is hereby authorized to appoint special policemen, with such compensation as the proper authorities of said town or city may fix, who shall, after taking oath, have the powers of constables under the laws of this state, and who may arrest with or without warrant any person committing, within the territory over which such town or city is given jurisdiction by this act, any offense declared by law of this state, or by any ordinance of such town or city, against the purity of such water supply, or any violation of any rule or regulation lawfully promulgated by the state board of health for the protection of the purity of such water supply. Such policeman shall be, and he is hereby, authorized to forthwith take any such person arrested for any such offense or violation aforesaid, before any court having jurisdiction thereof to be proceeded with according to law. Every such special policeman shall, when on duty, wear in plain view a badge or shield bearing the words "Special police" and the name of the town or city for which he shall be appointed as aforesaid. [L. '99, p. 114, § 1; L. '07, p. 562, § 1.]

Protection from pollution of source
of municipal water supply. 11

L. B. A. (N. S.) 1163; L. B. A.
1918E, 954.

§ 9474. [7991.] Pollution Prohibited—Removal of Nuisance—Penalty.

The establishment or maintenance of any slaughter-pen, stock feeding yards, hog pens, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conduct of any business or occupation, or the allowing of any condition upon or sufficiently near the sources from which the supply of water for the inhabitants of any such city or town is obtained, or where such water is stored, or the property or means through which the same may be conveyed or conducted so that such water would be polluted or the purity of such water or any part thereof destroyed or endangered, is hereby prohibited and declared to be unlawful, and is hereby

declared to be and constitute a nuisance, and as such to be abated as other nuisances are abated under the provisions of the existing laws of the state of Washington, or under the laws which may be hereafter enacted in relation to the abatement thereof; and that any person or persons who shall do, establish, maintain, or create any of the things hereby prohibited for the purpose of or which shall have the effect of polluting any such sources of water supply, or water, or shall do any of the things hereby declared to be unlawful, shall be deemed guilty of creating and maintaining a nuisance, and may be prosecuted therefor, and upon conviction thereof may be fined in any sum not exceeding five hundred dollars. [L. '99, p. 115, § 2.]

See, also, § 9281, *supra*, and notes.

Validity of ordinance or statute prohibiting pollution of municipal

water supply. *Ann. Cas.* 1917D, 1094; 7 *L. R. A. (N. S.)* 321.

§ 9475. [7992.] Prosecutions for Nuisances.

If upon the trial of any person or persons for the violation of any of the provisions of this chapter such person or persons shall be found guilty of creating or maintaining a nuisance as hereby defined or of violating any of the provisions of this chapter, it shall be the duty of such person or persons to forthwith abate such nuisance, and in the event of their failure so to do within one day after such conviction, unless further time be granted by the court, a warrant shall be issued by the court wherein such conviction was obtained, directed to the sheriff of the county in which such nuisance exists, and the sheriff shall forthwith proceed to abate the said nuisance and the cost thereof shall be taxed against the party so convicted as a part of the costs of such case. [L. '99, p. 115, § 3.]

§ 9476. [7993.] Duty of Health Officers.

It is hereby made the duty of the city health officer, city physician, board of public health, mayor of the city or such other officer, as may have the sanitary condition of such city or town in charge, to see that the provisions of this chapter are enforced and upon complaint being made to any such officer to immediately investigate the said complaint and if the same shall appear to be well founded it shall be and is hereby declared to be the duty of such officer to proceed and file a complaint against the person or persons violating any of the provisions of this chapter and cause the arrest and prosecution of such person or persons. [L. '99, p. 116, § 4.]

§ 9477. [7994.] Injunction Proceedings.

Any city supplied with water from any source of supply as hereinbefore mentioned, or any corporation owning waterworks for the purpose of supplying any city or the inhabitants thereof with water in the event that any of the provisions of this chapter are being violated by any person, may, by civil action in the superior court of the proper county, have the maintenance of the nuisance which pollutes or tends to pollute the said water, as provided for by section 9474, enjoined, and such injunction may be perpetual. [L. '99, p. 116, § 5.]

CHAPTER XXVII.

ACCIDENT CLAIMS AND FUNDS.

§ 9478. [7995.] First Class Cities—Claim must State Residence.

Whenever a claim for damages sounding in tort against any city of the first class shall be presented to and filed with the city clerk or other proper officer of such city, in compliance with valid charter provisions of such city, such claim must contain, in addition to the valid requirements of such city charter relating thereto, a statement of the actual residence of such claimant, by street and number, at the date of presenting and filing such claim; and also a statement of the actual residence of such claimant for six months immediately prior to the time such claim for damages accrued. [L. '09, p. 181, § 1.]

Cited in 64 Wash. 154; 66 Wash. 634, 635; 73 Wash. 126; 74 Wash. 618, 626; 76 Wash. 39, 40; 78 Wash. 544, 545; 80 Wash. 128, 134, 138; 83 Wash. 52; 84 Wash. 276; 85 Wash. 151, 152, 531; 86 Wash. 428; 87 Wash. 377, 380; 88 Wash. 396, 592; 103 Wash. 51; 109 Wash. 269.

CLAIMS AGAINST CORPORATION:
See Remington's Digest, Mun. Corp., §§ 564—573, and cases cited. See, also:

§ 565. **Presentation:** Allis-Chalmers Mfg. Co. v. Ellensburg, 108 Wash. 533, 185 Pac. 811.

§ 566. **Statement of Residence:** Titus v. Montesano, 106 Wash. 608, 181 Pac. 43.

— Sufficiency of Notice—Description of Injury: Titus v. Montesano, 106 Wash. 608, 181 Pac. 43.

§ 567. **Sufficiency—Variance:** Neely v. Seattle, 109 Wash. 266, 186 Pac. 880; Titus v. Montesano, 106 Wash. 608, 181 Pac. 43.

§ 570. **Presentation and Filing:** Titus v. Montesano, 106 Wash. 608, 181 Pac. 43.

Sufficiency of name and address of claimant in statutory notice of defect in street or highway. **Ann. Cas.** 1916E, 722.

Sufficiency of statutory notice with respect to description of place of accident. 18 **Ann. Cas.** 994.

Sufficiency of statutory notice with respect to time of notice of accident in claim against municipality. **Ann. Cas.** 1918E, 1026.

Infancy or other disability of claimant as suspending limitation of time to file claim against municipality. 13 **Ann. Cas.** 488; **Ann. Cas.** 1916C, 1042.

Applicability of statute requiring notice of claim for damages from injuries in street as affected by the conditions which caused the injury. 10 **A. L. R.** 249.

§ 9479. [7996.*] Cumulative With Charter Provisions—Claims by Relatives or Agents.

Nothing in this act shall be construed as in anywise modifying, limiting or repealing any valid provision of the charter of any such city relating to such claims for damages, but the provisions of this act shall be in addition to such charter provisions, and such claims for damages, in all other respects, shall conform to and comply with such charter provisions: Provided, that if the claimant shall be incapacitated from verifying and filing his claim for damages within the time prescribed by charter, or if the claimant be a minor, or in case the claim is for damages to real or personal property, and if the owner of such property is a nonresident of such city or is absent therefrom during the time within which a claim for damages to said property is required to be filed, then the claim may be verified and presented on behalf of said claimant by any relative or attorney or agent representing the injured person, or in case of damages to property, representing the owner thereof, and no action for damages now pending or hereafter brought shall be defeated by the failure of the

person to verify or file the claim in person if action be brought within three years after the taking effect of this act where a claim has heretofore been verified and filed within the time and in compliance with the terms of this act if said claim has been rejected. [L. '17, p. 339, § 1; L. '15, p. 421, § 1. Cf. L. '09, p. 181, § 2.]

See notes to § 9478.

"Act" in this section refers to §§ 9478—9480.

Cited in 66 Wash. 635; 74 Wash. 618; 76 Wash. 39, 40; 78 Wash. 544, 545; 79 Wash. 306; 80 Wash. 128; 87 Wash. 376, 377, 378, 380; 88 Wash. 396, 592.

An action, appealed to the supreme

court, is "pending" until the disposition of a petition for a rehearing, within the meaning of this section: Haynes v. Seattle, 87 Wash. 375, 151 Pac. 789, 10 N. C. C. A. 451.

§ 9480. [7997.] Provisions Mandatory.

Compliance with the provisions of this act is hereby declared to be mandatory upon all such claimants presenting and filing any such claims for damages. [L. '09, p. 182, § 3.]

"Act": See note to preceding section.

Cited in 64 Wash. 154; 66 Wash. 635; 74 Wash. 619; 76 Wash. 39, 40; 78 Wash. 544, 545; 79 Wash. 306; 80 Wash. 128,

134; 83 Wash. 52, 53; 86 Wash. 428; 87 Wash. 377, 380, 381; 88 Wash. 397, 592.

§ 9481. [7998.] Other Than First Class Cities—Presentation of Claim.

All claims for damages against any city or town of the second, third or fourth class must be presented to the city or town council and filed with the city or town clerk within thirty days after the time when such claim for damages accrued: Provided, that if the claimant shall be incapacitated from verifying and filing his claim for damages within said thirty days, or if the claimant be a minor, then the claim may be verified and presented on behalf of said claimant by any relative or attorney or agent representing the injured person, and no action for damages shall be defeated by the failure of the person to verify and file the claim in person if action be brought within three years after the taking effect of this act where a claim has heretofore been filed within the time and in compliance with the terms of this act if said claim has been rejected. No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until such claim has first been referred to the proper department or committee, nor until such department or committee has made its report to the council thereon pursuant to such reference. All such claims for damages must accurately locate and describe the defect that caused the injury, reasonably describe the injury and state the time when the same occurred, give the residence for six months last past of claimant, contain the items of damages claimed and be sworn to by the claimant or a relative, attorney or agent of the claimant. No action shall be maintained against any such city or town for any claim for damages until the same has been presented to the council and sixty days have elapsed after such presentation. [L. '15, p. 422, § 2. Cf. L. '09, p. 627, § 1.]

Cited in 67 Wash. 91; 76 Wash. 397; 83 Wash. 54; 86 Wash. 169, 430; 87

Wash. 382; 91 Wash. 467; 106 Wash. 613; 108 Wash. 541; 111 Wash. 391.

§ 9482. [7999.] Accident Fund.

Any city of the second, third or fourth class in the state of Washington is hereby authorized to create a fund to be known as the accident fund. [L. '09, p. 423, § 1.]

Cited in 57 Wash. 88.

This act affects only the remedy, and is applicable to existing judgments for which no warrants were drawn when the

law went into effect: State ex rel. Billings v. Lamprey, 57 Wash. 84, 106 Pac. 501.

§ 9483. [8000.] Judgments Paid from Fund.

When a judgment obtained against any such city on account of personal injuries suffered by any person has been duly certified to the clerk of said city, as now provided by law, the clerk shall draw warrants upon the accident fund for the full amount of said judgment, interest and costs as shown by said transcript of judgment. [L. '09, p. 423, § 2.]

Cited in 57 Wash. 88.

§ 9484. [8001.] Tax to Pay Warrants on Funds.

At the first meeting of the city council after the drawing of said warrants the city council of said city shall estimate the amount necessary to pay said warrants, with accrued interest thereon, and shall levy a special tax sufficient to pay said amount, not exceeding three mills on the dollar. If a levy of three mills is not sufficient to pay said warrants and interest thereon, then an additional levy not exceeding three mills shall be made from year to year until said warrants and interest are fully paid. [L. '09, p. 424, § 3.]

Cited in 57 Wash. 88.

§ 9485. [8002.] Surplus to Current Expense Fund.

After the payment of said warrants and interest in full if any money remains in said accident fund, the same shall be paid into the current expense fund of said city: Provided, that no other judgment for personal injuries is then due and remaining unpaid against such city, in which event the remaining money in said fund shall be applied to the payment of such judgment. [L. '09, p. 424, § 4.]

Cited in 57 Wash. 88.

§ 9486. [8003.] Denominations, etc., of Warrants.

The warrants provided for herein shall be issued in denominations not less than one hundred dollars nor more than five hundred dollars; shall be signed by the mayor of said city and attested by the clerk, shall draw interest at the rate of six per cent per annum, shall be numbered consecutively and shall be paid in the order of their issue. [L. '09, p. 424, § 5.]

Cited in 57 Wash. 88.

§ 9487. [8004.] Collection of Tax.

The special tax herein provided for shall be assessed and collected in the manner provided by law for the collection of general taxes in such city. [L. '09, p. 424, § 6.]

Cited in 57 Wash. 88.

CHAPTER XXIX.

PUBLIC UTILITIES, ACQUISITION OF, AND BONDS FOR.

§ 9488. [8005.] Public Utilities—Authority to Acquire and Operate.

Any incorporated city or town within the state be, and hereby is, authorized to construct, condemn and purchase, purchase, acquire, add to, maintain, conduct and operate waterworks, within or without its limits, for the purpose of furnishing such city or town and the inhabitants thereof, and any other persons, with an ample supply of water for all uses and purposes, public and private, including water power and other power derived therefrom, with full power to regulate and control the use, distribution and price thereof; to construct and maintain systems of sewerage, and systems and plants for refuse collection and disposal, with full jurisdiction and authority to manage, regulate and control the same within and without the limits of the corporation; to construct, condemn and purchase, purchase, acquire, add to, maintain and operate works, plants and facilities for the preparation and manufacture of all such stone or asphalt products or compositions or other materials which may be used in street construction or maintenance, together with the right to use the same, and also to fix the price of and to sell the same for use in the construction of municipal improvements of such city or town; to construct, acquire and operate public markets and one or more cold storage plants for the sale and preservation of butter, eggs, meats, fish, fruits, vegetables, and other perishable provisions; and to construct, condemn and purchase, purchase, acquire, add to, maintain and operate works, plants and facilities for the purpose of furnishing such city or town and the inhabitants thereof, and any other persons, with gas, electricity and other means of power and facilities for lighting, heating, fuel and power purposes, public and private, with full authority to regulate and control the use, distribution and price thereof, together with the right to handle and sell, or lease, any meters, lamps, motors, transformers and equipment or accessories of any and every kind, necessary and convenient for the use, distribution and sale thereof; to authorize the construction of such plant or plants by others for the same purpose, and to purchase such gas, electricity or power from others either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within such city or town, and to regulate and control the use and price thereof; to construct, condemn and purchase, purchase, acquire, add to, maintain, operate or lease cable, electric and other railways within the limits of such city or town for the transportation of freight, and passengers above or underneath the ground, with full authority to regulate and control the use and operation thereof, and to fix, alter, regulate and control the fares and rates to be charged thereon; and for the purpose aforesaid, and it shall be lawful for any city or town in this state to take condemn, and purchase, purchase, acquire and retain water from any public or navigable lake or watercourse percolating or subterranean, or any underflowing water within the state, and, by means of aqueducts or pipe-lines, to conduct the same to said city or town; and such city or town is hereby authorized and empowered to erect and build dams or other works across or at the outlet of any lake or watercourse in

this state for the purpose of storing and retaining water therein up to and above high-water mark; and for all the purposes of erecting such aqueducts, pipe-lines, dams, or waterworks or other necessary structures in storing and retaining water, as above provided, or for any of the purposes provided for by this act, such city or town shall have the right to occupy and use the beds and shores up to the high-water mark of any such watercourse or lakes, and to acquire the right by purchase or by condemnation and purchase, or otherwise, to any water, water rights, easements or privileges named in this act, or necessary for any of said purposes, and any such city or town shall have the right to acquire by purchase or by condemnation and purchase any lands, properties or privileges necessary to be had to protect the water supply of such city or town from pollution: Provided, that should private property be necessary for any such purposes or for storing water above high-water mark, such city or town may condemn and purchase, or purchase and acquire such property: And provided further, that no such dam or other structure shall impede, obstruct or in any way interfere with public navigation of such lake or watercourse. [L. '13, p. 112, § 1; L. '09, p. 580, § 1. Cf. L. '90, p. 520, § 1; 1 H. C., § 696; L. '93, p. 12, § 1; L. '97, p. 326, § 1; L. '99, p. 250, § 1; L. '05, p. 300, § 1.]

Former laws cited in 1 Wash. 298, 300, 311, 319, 323; 2 Wash. 594, 675; 6 Wash. 143, 148; 7 Wash. 190, 191; 9 Wash. 311; 13 Wash. 144; 43 Wash. 145; 57 Wash. 424, 432, 434; 69 Wash. 680; 71 Wash. 644; 73 Wash. 276; 74 Wash. 302; 77 Wash. 599; 80 Wash. 155; 81 Wash. 179; 86 Wash. 156, 159; 87 Wash. 3.

Query: Whether this chapter does not supersede or repeal many earlier laws on the subject of local improvements and public utilities, to a certain extent.

See *infra*, § 9534, increased indebtedness for water, light, etc.

Cited in 84 Wash. 409; 87 Wash. 3; 90 Wash. 509, 510, 513; 92 Wash. 595; 93 Wash. 178; 95 Wash. 533, 539; 101 Wash. 373; 103 Wash. 674; 106 Wash. 43, 44, 55; 108 Wash. 576, 577; 112 Wash. 449, 451, 473.

POWER TO INCUR INDEBTEDNESS AND EXPENDITURES: See Remington's Digest, Mun. Corp., §§ 482—495, and cases cited. See, also:

§ 485. Current Expense Fund—Erection of City Hall: State ex rel. Republic v. Harvey, 108 Wash. 48, 182 Pac. 931.

§ 486. Limitation of Amount of Bonds—Constitutional Provisions: Langdon v. Walla Walla, 112 Wash. 446, 193 Pac. 1.

§ 487. Limitations—Payable Out of Special Fund—Provision for Operating Expenses: Twichell v. Seattle, 106 Wash. 32, 179 Pac. 127.

—“Due Regard” to Operating Expenses—Statutes: Twichell v. Seattle, 106 Wash. 32, 179 Pac. 127.

Under this section authorizing cities to condemn property for lighting, heating, and power purposes “public and private,” the word “private” will be eliminated as a nullity, as it is not so commingled with the public uses that they cannot be separated, and the remainder of the act is

constitutional as a complete act capable of execution in accordance with the legislative intent: Tacoma v. Nisqually Power Co., 57 Wash. 420, 107 Pac. 199.

A statute requiring a “fixed proportion” of the revenues from a water system to be set apart to meet accruing interest and the obligation as it matures is not complied with by setting aside \$175,000 out of the gross revenues or out of seventy-five per cent of the gross revenues: Aylmore v. Seattle, 48 Wash. 42, 92 Pac. 932.

This section, giving to cities the right to occupy and use the beds and shores of lakes up to the high-water mark, does not mean the highest water reached during annual flood periods, but means the upland boundary of tide and shore lands separating soil adapted for use from that which is submerged so long or frequently in ordinary seasons that vegetation will not grow upon it: Austin v. Bellingham, 69 Wash. 677, 126 Pac. 59.

This section, authorizing cities to condemn for public purposes “works, plants, and facilities,” either expressly or by necessary implication grants the right to acquire works and plants of private corporations already devoted to a public use: Tacoma v. Nisqually Power Co., 57 Wash. 420, 107 Pac. 199.

A city may adopt a plan for obtaining a water supply outside of the city without providing for a distributing system within the city, under this section, authorizing a city to construct, acquire or add to waterworks, within or without its limits, for the purpose of furnishing an ample supply of water, and section 9489, requiring it to adopt the system or plan proposed and submit it to the qualified electors: *Matthews v. Ellensburg*, 73 Wash. 272, 131 Pac. 839.

This section is sufficiently broad to permit the condemnation of a street railway already devoted to the public use, as well as its franchises, although no specific mention is made of railways in active operation nor of the franchises of the railways mentioned: *State ex rel. Peabody v. Superior Court*, 77 Wash. 593, 138 Pac. 277.

This section authorizes the condemnation of such portions of a street railway as lie within the city limits, although the road is partly within and partly without the city and is operated as a unit, and may damage property outside the city; since it is a necessary incident of the powers granted, and since the city must make compensation for all property damaged whether within or without the city: *State ex rel. Peabody v. Superior Court*, 77 Wash. 593, 138 Pac. 277.

Under this chapter, empowering cities to acquire public utilities in either one of two ways, viz.: (1) By the issuance of general bonds or warrants, or (2) By the creation of a special fund to be sustained by the gross revenues of the system out of which special bonds are to be redeemed, a city having adopted the latter method and secured the voters' assent to a special bond issue of "\$90,000 as near as may be," "to condemn, purchase, acquire, add to, maintain, conduct and operate" the system, and limited its bond issue to that sum, is without power, by a subsequent ordinance, to pay from the general fund \$4,500 for the cost of preparing the bonds, legal expenses, commissions and cost of making extensions and necessary repairs, \$90,000 being more than the purchaser of the bonds was willing to advance upon the security of the water system, since the manner of payment was an essential part of the plan

to be submitted to the people, and cannot be subsequently changed: *Uhler v. Olympia*, 87 Wash. 1, 151 Pac. 117, 152 Pac. 998.

A city has power to acquire a water system and, after supplying its inhabitants, to dispose of surplus water to another municipality, under this section, authorizing such acquisition for the purpose of supplying its inhabitants "and any other persons": *Spear v. Bremerton*, 90 Wash. 507, 156 Pac. 825.

Although by this chapter, a city in submitting the construction of a water system must apprise the taxpayers of the probable cost, the total expense which may be incurred is not limited to the estimated sum of \$2,000,000, under the circumstances shown: *State ex rel. Wright v. Tacoma*, 92 Wash. 591, 159 Pac. 765.

The city charter of the city of Seattle, Article IV, section 18, providing that the city council shall have power to provide for the acquisition of waterworks, authorizes the council to provide therefor by ordinance, within the meaning of this section, where, in the city charter, adopted by a vote of the people, an article or provision had been adopted authorizing the city council to provide by ordinance for acquiring a utility: *Shorts v. Seattle*, 95 Wash. 531, 164 Pac. 239.

What are public utilities within constitutional or statutory provisions as to purchase, construction or repair of same by municipality. 9 **A. L. R.** 1033.

Power of municipality to engage in business of furnishing fuel or heat to inhabitants. **Ann. Cas.** 1916C, 742; **Ann. Cas.** 1918E, 663; 37 **L. R. A. (N. S.)** 510.

Power of municipality to operate ice plant for purpose of furnishing ice to inhabitants. 20 **Ann. Cas.** 204; **Ann. Cas.** 1916C, 1287; **Ann. Cas.** 1918D, 911.

Power of municipality to construct and operate telephone system. **Ann. Cas.** 1918A, 380.

Power of municipality to construct or operate lighting plant. **Ann. Cas.** 1916B, 523; **Ann. Cas.** 1918A, 259.

§ 9489. [8006.] Procedure—Special Election, etc.

Whenever the city council or other corporate authorities of any such city or town shall deem it advisable that the city or town of which they are officers shall purchase, acquire or construct any public utility mentioned in section 9488 hereof or make any additions and betterments thereto or extensions thereof, the common council or other corporate authorities shall provide therefor by ordinance, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof

as near as may be, and the same shall be submitted for ratification or rejection to the qualified voters of said city at the general or special election, except in the following cases where no submission shall be necessary:

(1) When the work proposed is an addition to, or betterment of, or extension of, or an increased water supply for, existing waterworks, or an addition, betterment or extension of an existing system or plant of any other public utility mentioned in section 9488 hereof, for which no general indebtedness is to be incurred by such city or town: Provided, such undertaking shall have been authorized by the common council of such city or town prior to July 1, 1910; or

(2) Where in any charter of any city or town in the state of Washington heretofore or hereafter adopted by a vote of the people, an article or provision has been adopted authorizing the city council or other corporate authorities of such city to provide by ordinance for acquiring, opening or operating any of said public utilities, for which no general indebtedness is to be incurred, by such city or town. If a general indebtedness is to be incurred, the amount of such indebtedness and the terms thereof shall be included in the proposition submitted to the qualified voters as aforesaid and such proposition shall be adopted and assented to by three-fifths of the qualified voters of the said city or town voting at said election. If no general indebtedness is to be incurred such proposition may be adopted by a majority vote. Ten days' notice of such election shall be given in the newspaper doing the city or town printing, by publication in each issue of said paper during said time. Whenever a proposition has been adopted as aforesaid or in the cases mentioned in subdivisions first and second of this section where no submission shall be necessary the common council or other corporate authorities of such city or town shall have power to proceed forthwith to purchase, construct and acquire the public utility contemplated or to make additions, betterments and extensions thereto and to make payment therefor as hereinafter provided in section 9490 and section 9491. [L. '09, p. 582, § 2. Cf. L. '90, p. 520, § 2; L. '91, p. 326, § 1; 1 H. C., § 697; L. '93, p. 12, § 2; L. '97, p. 327, § 2; L. '01, p. 177, § 1.]

It seems that "subdivision 2" in fact ends with the first sentence, and a paragraph at that point was intended.

See notes to § 9488.

Cited in 1 Wash. 312, 315, 320; 6 Wash. 150, 430, 431, 435; 7 Wash. 191; 17 Wash. 61; 40 Wash. 96, 97, 98; 49 Wash. 530; 51 Wash. 164; 71 Wash. 644; 72 Wash. 410, 415; 73 Wash. 276; 74 Wash. 302; 77 Wash. 599; 86 Wash. 156, 159; 87 Wash. 5, 111; 95 Wash. 534, 535, 540, 542; 106 Wash. 43, 55; 108 Wash. 576; 112 Wash. 451, 469.

An ordinance submitting to the electors a bond issue for the acquisition of waterworks is not objectionable in that it is not a positive declaration upon the part of the city, but is made dependent upon a subsequent ratification by a vote of the people, where this section requires the same to be so submitted and ratified: *Uhler v. Olympia*, 87 Wash. 1, 151 Pac. 117, 152 Pac. 998.

The statute authorizing a city to condemn waterworks under the special fund plan, to be paid for out of the gross revenues of the system, does not allow the system to be used as a money-making venture, the citizen being entitled to the best possible service at the lowest possible price: *Uhler v. Olympia*, 87 Wash. 1, 151 Pac. 117, 152 Pac. 998.

A charter provision authorizing the acquisition of a public utility is not invalid because its provisions are not couched in the same terms as found in this section, where it cannot be said that the charter does not meet the requirements of the statute: *Shorts v. Seattle*, 95 Wash. 538, 164 Pac. 241.

Under this section, providing that the plan of a proposed municipal indebtedness

to be submitted to the voters of the city shall include the amount of the indebtedness and the terms thereof, a bond issue is invalid where the proposition submitted did not, either as set out in the ordinance, as published in the notice of election, or as printed on the ballots, contain any statement as to the time the bonds

would run nor the interest they were to bear: *State ex rel. Ellensburg v. Clausen*, 87 Wash. 111, 151 Pac. 251.

Proposition submitted to people with reference to erection or purchase of a public utility as a single or double proposition. 5 A. L. R. 538.

§ 9490. [8007.] Issuance of Bonds—Limit of Indebtedness.

Whenever the qualified voters of any such city or town shall have heretofore adopted or shall hereafter adopt a proposition for any public utility as aforesaid, and shall have authorized a general indebtedness, general city or town bonds may be issued as hereinafter provided. Said bonds shall be registered or coupon bonds, shall be issued in denominations of not less than one hundred, or more than one thousand dollars; shall be numbered from one up consecutively; shall bear the date of their issue; shall be payable not more than twenty years from date; and shall bear interest not exceeding six per cent per annum, payable semi-annually, with interest coupons attached, and the principal and interest shall be made payable at such place as may be designated. The bonds and each coupon shall be signed by the mayor and attested by the clerk under the seal of the city or town. There shall be levied each year a tax upon the taxable property of such city or town, as the case may be, sufficient to pay the interest on said bonds as the same accrue, and before seven years prior to the maturity thereof, an annual sinking fund sufficient for the payment of said bonds at maturity, which taxes shall become due and collectible as other taxes. Said bonds shall be printed and engraved, or lithographed, on good bond paper, and a duly authenticated copy of this act, together with the ordinance of the city or town directing the submission of such plan or system to the qualified voters of such city or town for ratification or rejection shall be printed on each bond, together with a printed copy of a signed statement by the mayor and clerk showing the result of said election. Such bonds shall be sold in such manner as the corporate authorities shall deem for the best interests of the city or town. A register shall be kept of all the bonds, which register shall show the number, date, amount, interest, to whom delivered—if coupon bonds—and the name of the payee—if registered bonds; and when and where payable, and each and every bond executed, issued or sold under the provisions of this subdivision.

The total indebtedness incurred under the authority of this act, added to all other indebtedness of such city or town at any time outstanding, shall not exceed five per centum of the value of the taxable property therein, to be ascertained in the case of towns by the last assessment for state and county purposes, and in the case of cities by the last assessment for city purposes, previous to the incurring of such indebtedness: Provided, however, that any such city or town may become indebted to a larger amount, but not exceeding five per centum additional, for supplying such city or town with water, artificial light and sewers when works for supplying such water, light, and sewers shall be owned and controlled by the municipality. [L. '09, p. 583, § 3.]

“This subdivision”: The meaning of this reference is not clear.

Bonds for local improvements: See *infra*, § 9515 et seq.

Cited in 71 Wash. 644; 76 Wash. 447; 77 Wash. 599; 84 Wash. 674; 86 Wash. 156, 159; 108 Wash. 576; 112 Wash. 465, 471.

BONDS: See Remington's Digest, Mun. Corp., §§ 517—534, and cases cited. See, also:

§ 517. Sale of Bonds at Discount—Rate of Interest—Validity—Power to Issue: Cuddy v. Sturtevant, 111 Wash. 304, 190 Pac. 909.

§ 519. Limitation of Amount of Bonds—Constitutional Provisions: Langdon v. Walla Walla, 112 Wash. 446, 193 Pac. 1.

§ 523. Issuance—Submission to Voters—Ratification of Plan—Separate Purposes: Langdon v. Walla Walla, 112 Wash. 446, 193 Pac. 1.

§ 524. Notice of Election—Publication: Langdon v. Walla Walla, 112 Wash. 446, 193 Pac. 1.

§ 525. Public Utilities—Bonds—Sale at Discount—Powers of City—Statutes: Hill v. Seattle, 108 Wash. 572, 185 Pac. 631.

— Recitals—Bona Fide Purchasers—Duty to Examine Records—Estoppel: Cuddy v. Sturtevant, 111 Wash. 304, 190 Pac. 909.

— Rate of Interest—Usury—Validity—Power to Issue: Cuddy v. Sturtevant, 111 Wash. 304, 190 Pac. 909.

— Recitals in Bonds—Negotiability and Transfer—Bona Fide Purchasers—Estoppel: Cuddy v. Sturtevant, 111 Wash. 304, 190 Pac. 909.

— Public Utilities—Bonds—Sale at Discount—Statutes: Langdon v. Walla Walla, 112 Wash. 446, 193 Pac. 1.

§ 531. Bona Fide Purchasers—Duty to Examine Records—Estoppel: Cuddy v. Sturtevant, 111 Wash. 304, 190 Pac. 909.

Under this section, requiring a town to sell bonds issued for the purpose of

purchasing waterworks, as deemed for the best interests of the town, the town has no authority to issue bonds and deliver them to bankers who advanced the money to purchase the waterworks at the special instance and request of the town: Hansasard v. Green, 54 Wash. 161, 103 Pac. 40, 132 Am. St. Rep. 1107, 24 L. R. A. (N. S.) 1273.

Under this section, providing that general fund bonds may be sold in such manner as the corporate authorities shall deem best, a city may provide, in letting a contract for waterworks, that the bonds may be delivered to the contractor in payment for the work; such a transaction being a "sale" within the meaning of the act: Washington-Oregon Corporation v. Chehalis, 76 Wash. 442, 136 Pac. 681.

A proposition for a bond issue by a city submitted to the voters thereof, in which the bond interest was stated as "at a rate not exceeding six per cent per annum," following the language of this section, is sufficient without fixing a definite rate of interest, as such bonds are the subject of competitive bids in the open market and it is common practice for a bidder to state the rate of interest which he is willing to accept: Schooley v. Chehalis, 84 Wash. 667, 147 Pac. 410.

Under the statute requiring cities to issue and sell its bonds or warrants in payment for a public utility "bearing interest at a rate not exceeding six per cent per annum," the city cannot issue bonds of the face value of \$90,000, bearing interest at six per cent, and pay to the purchaser the sum of \$4,500 out of the general fund (as a commission), under the pretense of meeting incidental expenses of the issue; since the same is plainly a device to pay a greater sum for the use of the money loaned than the statute permits: Uhler v. Olympia, 87 Wash. 1, 151 Pac. 117, 152 Pac. 998.

§ 9491. [8008.] Special Fund—Purpose, Creation, Disbursement, etc.

Whenever the qualified voters of any such city or town shall have heretofore adopted or shall hereafter adopt a proposition for any public utility as heretofore provided and either no general indebtedness shall have been authorized or the common council or other corporate authorities shall not desire to incur a general indebtedness, and whenever the common council or other corporate authorities of any such city or town shall be authorized to exercise any of the powers conferred by section 9488 hereof without submitting any proposition as provided in subdivision first and second of section 9489 hereof, the common council or other corporate authorities shall have power to create a special fund or funds for the sole purpose of defraying the cost of such public utility or addition, betterment or extension thereto, into which special fund or funds the common council or other corporate authorities of such city or town may

obligate and bind the city or town to set aside and pay a fixed proportion of the gross revenues of such public utility, or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount without regard to any fixed proportion, and to issue and sell bonds or warrants bearing interest not exceeding six per centum per annum, payable semi-annually, executed in such manner and payable at such times and places as the common council or other corporate authorities of such city or town shall determine, but such bonds or warrants and the interest thereon shall be payable only out of such special fund or funds. In creating any such special fund or funds the common council or other corporate authorities of such city or town shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants, or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. Any such bonds or warrants and interests thereon issued against any such fund as herein provided shall be a valid claim of the holder thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such city or town within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state upon its face that it is payable from a special fund, naming the said fund and the ordinance creating it. Said bonds and warrants shall be sold in such manner as the corporate authorities shall deem for the best interests of the city or town, and the corporate authorities may provide in any contract for the construction and acquirement of the proposed improvement that payment therefor shall be made only in such bonds and warrants at par value thereof.

When any such special fund shall have been heretofore or hereafter created and any such obligation shall have been heretofore or shall hereafter be issued against the same, a fixed proportion, or a fixed amount out of and not exceeding such fixed proportion, or a fixed amount without regard to any fixed proportion, of revenue shall be set aside and paid into said special fund as provided in the ordinance creating such fund, and in case any city or town shall fail to thus set aside and pay said fixed proportion or amount as aforesaid, the holder of any bond or warrant against such special fund may bring suit or action against the city or town and compel such setting aside and payment. [L. '09, p. 584, § 4.]

Cited in 71 Wash. 644; 76 Wash. 445; 77 Wash. 599; 81 Wash. 183; 84 Wash. 567, 677; 86 Wash. 156, 159; 87 Wash. 12; 92 Wash. 596; 95 Wash. 537, 540, 543; 106 Wash. 44, 46-49, 56; 108 Wash. 576, 577; 111 Wash. 307, 309, 315.

Municipal bonds sold at a discount which would result in greater interest than six per cent are not usurious: *Cuddy v. Sturtevant*, 111 Wash. 304, 190 Pac. 909.

In view of this section, the city of Seattle has power, under its charter

passed in conformity to such general law, to create a local assessment district for the purpose of laying a water-main and charge the cost thereof against property owners according to benefits to their real property in such district: *Smith v. Seattle*, 25 Wash. 300, 65 Pac. 612.

The provisions in a city charter that public utility bonds shall be payable serially in such amounts, and at such times as may be agreed upon, between the tenth and fortieth years after the date of issuance, conflicts with this section, which

provides that the bonds shall be executed in such manner and payable at such times as the common council shall determine, and this discretion, having been vested in the city council, cannot be controlled or circumscribed by the charter: *Shorts v. Seattle*, 95 Wash. 538, 164 Pac. 241.

Where the city charter relating to municipal water bonds contains no limitations as to the maturity of bonds payable solely from the earnings of public utilities, the city council has power to fix the date of their maturity, under this section: *Shorts v. Seattle*, 95 Wash. 531, 164 Pac. 239.

A proposition for the issuance of bonds for the purchase and maintenance of a water system is not illegal as contemplating the use of the proceeds of the bonds for maintenance purposes, in violation of the provision of this section, which provides that the maintenance of such a system shall be paid out of the revenues of the plant, since it will not be presumed that the city will do an illegal act, or that it will not perform its duty by fixing rates so as to maintain the plant from its revenues: *Schooley v. Chehalis*, 84 Wash. 667, 147 Pac. 410.

Where a city water system was to be paid for by an issue of \$70,000 in general bonds of the city, and the balance, estimated at \$115,000, by special water fund bonds payable out of the revenues of the water system, a special fund created to take care of the matter, by the payment of a fixed sum each month out of the revenues of the plant, is not invalid from the fact that such monthly payments are to be made from a collection fund having in it other moneys than

revenues from the plant, where such revenues can be readily segregated, and the special fund was created in all respects as required by this section: *Washington-Oregon Corporation v. Chehalis*, 76 Wash. 442, 136 Pac. 681.

Under this section, special fund utility bonds calling for five per cent interest semi-annually may be sold by the city at a discount that would yield six per cent interest, in the absence of any statute prohibiting sales at less than par: *Hill v. Seattle*, 108 Wash. 572, 185 Pac. 631.

Such sales at less than par are not prohibited by the latter part of such section, which provides that the contract for the improvement may provide for payment only in bonds and warrants at par: *Hill v. Seattle*, 108 Wash. 572, 185 Pac. 631.

Sales of five per cent below par so as to net six per cent per annum does not violate this section, providing that the rate of interest shall not exceed six per cent per annum payable semi-annually: *Hill v. Seattle*, 108 Wash. 572, 185 Pac. 631.

The objection to such a sale that the discount is payable in a lump sum, and violates the statute requiring semi-annual payments, is technical and goes largely to the form of the bonds: *Hill v. Seattle*, 108 Wash. 572, 185 Pac. 631.

Administration in General, Appropriations, Warrants and Payment: See *Remington's Digest, Mun. Corp.*, §§ 496—516, and cases cited. See, also:

§ 511. From What Fund Payable—Current Expense Fund—Erection of City Hall: *State ex rel. Republic v. Harvey*, 108 Wash. 48, 182 Pac. 931.

§ 9492. [8009.] Previous Action Ratified.

In all cases where the qualified electors of any city or town have heretofore, at any election, ratified any plan or system of any public utility mentioned in section 9488 of this code, and shall have authorized a general indebtedness of such city or town and the issuance of bonds therefor, or the creation of a special fund or funds out of the revenues of the public utility the plan or system of which was so ratified, and the issuance of bonds or warrants payable only out of such fund or funds; and pursuant to such authorization or ratification a general indebtedness shall have been incurred or authorized to be incurred, and bonds or other obligations issued or contracted to be issued or authorized to be issued, or a special fund or funds shall have been created out of the revenue of any such public utility by pledging or setting aside a fixed proportion of such revenues, or a fixed amount out of and not exceeding a fixed proportion or a fixed amount without regard to any fixed proportion, and bonds or warrants payable either upon the call of such city or town or at a fixed date, but only out of such special fund or funds, issued or contracted to be issued, or authorized to be issued, or a contract or contracts for the purchase, construction, acquisition, improvement, betterment, or addition

to such public utility entered into; such general indebtedness, bonds or other obligations, contracts, special funds, and bonds or warrants, payable out of such special funds, and all proceedings relating thereto, are hereby ratified, confirmed and validated; and any bonds or other obligations constituting a general indebtedness, or bonds or warrants payable out of such special funds heretofore so authorized, may be hereafter issued or sold as if all of said proceedings were taken pursuant to and under the authority of this chapter, and in full compliance therewith. [L. '09, p. 586, § 5. Cf. L. '97, p. 330, § 3.]

Cited in 71 Wash. 644; 77 Wash. 599; 86 Wash. 156, 159.

§ 9493. [8009-1.] Ratifying and Funding Unauthorized Indebtedness.

Whenever any city, excepting cities of the first class, or town owning or operating any public utility mentioned in section 9488, shall have heretofore issued and has outstanding any warrants drawn upon any special fund or funds derived from the earnings of and maintained for such public utility, issued for any extension to, or betterment, or enlargement of the plant or system of such utility, or issued for the maintenance or operating expenses of such utility by reason of the fact that the funds derived from the earnings of such utility have been expended in constructing such extensions, betterments or enlargements, and the said extension to, betterment or enlargement shall not have been fully authorized by the electors of said city or town, said warrants and the indebtedness for which the same were issued, may be validated, ratified and funded, and the bonds of such city or town, or bonds payable out of the gross revenues of such public utility issued and exchanged therefor, or sold and the proceeds applied to the payment thereof in the manner hereinafter provided. [L. '15, p. 648, § 1.]

In General: See Remington's Digest, Mun. Corp., §§ 529, 530, and cases cited.

§ 9494. [8009-2.] Bond Issue for General Indebtedness—Gross Earnings.

The council, commission or other legislative authority of such city or town shall provide by ordinance for the submission of the questions of validating, ratifying and funding such warrants and indebtedness, and the issue and the exchange or sale of bonds therefor to the qualified voters of said city or town in the same manner prescribed in section 9489, for submitting the question of incurring indebtedness. If a general indebtedness is authorized by the qualified voters, general city or town bonds may be issued in the manner prescribed in section 9490. If no general indebtedness is authorized by the qualified voters, or if the legislative authorities shall not desire to incur a general indebtedness, bonds payable out of the gross earnings of such utility may be issued in the manner prescribed in section 9491. No irregularity in the form of any such warrants or in their manner of issue, shall be deemed to preclude such city or town from acting under the provisions of this act. [L. '15, p. 649, § 2.]

Bonds in General: See Remington's Digest, Mun. Corp., §§ 517—534, and cases cited.

§ 9495. [8010-8.] Acquisition of Water Systems.

That any city or town within the state, other than cities of the first class, situated within the limits of any irrigation project, owned or operated by the United States government, any water users' association, private individuals or corporation, or any other city or town where the council may deem it feasible to furnish water for irrigation and domestic purposes, and where the water used for irrigation and domestic purposes is appurtenant or may become appurtenant to the land located within the limits of any such city or town be, and hereby is authorized to purchase, lease or otherwise acquire water, water rights or additional water rights for the purpose of furnishing said city or town and the inhabitants thereof with a supply of water for irrigation and domestic purposes; to purchase, construct or otherwise acquire systems and means of distribution and delivery of such water within and without the limits of such city or town, or for the delivery of water where the owner of land within such city or town owns a water right appurtenant to his land, with full power to maintain, repair, reconstruct, regulate and control the same, and if private property be necessary for such purposes, such city or town may condemn and purchase or purchase and acquire such property, to enter into any contract and to order any and all work to be done which shall be necessary to carry out such purposes, and it may do so either by the entire city or town or by assessment districts, consisting of the whole or any portion thereof, as the council of said city or town may determine. [L. '15, p. 318, § 1.]

Cited in 101 Wash. 373.

§ 9496. [8010-9.] Special Assessments—Acquisition and Maintenance.

That for the purpose of paying the cost of purchasing a water right or additional water right, paying for a water right or an additional water right heretofore contracted to be purchased by the city or town from the United States government where the purchase price for said water right has not been fully paid, paying annual maintenance or annual rental charge to the United States government or other corporation or individual furnishing the water for irrigation and domestic purposes, paying assessments made by any water users' association, paying the cost and expense of constructing or otherwise acquiring any system or means of distribution or delivery of water for said purposes, the up-keep, repair, reconstruction, operation and maintenance thereof and any expense incidental to said purposes, such city or town be, and hereby is authorized to levy and collect special assessments and taxes to pay the whole or any part of the cost and expense of any such improvement. [L. '15, p. 319, § 2.]

§ 9497. [8010-10.] Special Benefits—Districts—Assessments.

All assessments and special taxes provided for in this act shall be levied and assessed upon the several parcels of land located within the local improvement district in accordance to the special benefits conferred on such property in proportion to the surface area, one square foot of surface to be the unit of assessment: Provided, that where the water right or additional water right shall be purchased or acquired or a special improvement shall be made for a portion of any district, then and in that

event the cost of such water right or the cost of such special improvement shall be levied and assessed in the same manner upon such portion of said district as shall be specially benefited thereby: And provided further, that whenever a special improvement shall be constructed for a portion of any district, the land assessed for the cost of such special improvement shall be entitled to an equitable reduction in the annual assessments in proportion to the reduced cost of operation on account of the construction of said improvement. [L. '15, p. 319, § 3.]

§ 9498. [8010-11.] Districts of Noncontiguous Territory—Bonds.

One local improvement district may be established for any or all of the purposes embraced in this act even though the area assessed for such purposes may not coincide or be contiguous: Provided, that whenever the council shall decide to construct a special improvement in a distribution system, a separate local improvement district may be formed for such portion and bonds may be issued for the same as provided in the general local improvement law. [L. '15, p. 320, § 4.]

§ 9499. [8010-12.] Mode of Assessment—Petition—Proceedings.

Whenever any such city or town shall make local improvements for the purposes herein provided, the proceedings relative to the creation of districts, levying and collecting assessments and all other procedure shall be had, and the council of such city or town is hereby authorized to proceed in accordance with all the provisions of sections 9352 to 9425, both inclusive, of this code, and any statute which may be enacted relative to local improvements, in so far as the same is not inconsistent with this act: Provided, that when such improvement or improvements shall be initiated upon petition, such petition shall set forth the fact that the signers are the owners according to the records in the office of the county auditor, of property to an aggregate amount of a majority of the surface area within the limits of the assessment district to be created therefor: Provided further, that when such assessment is made for any other purpose or purposes than the construction or reconstruction of any system or means of distribution or delivery of water, it shall not be necessary for the council to be furnished with a statement of the aggregate assessed valuation of the real estate exclusive of improvements in said district according to the valuation last placed upon it for purposes of general taxation, nor the estimated amount of the cost and expense of such improvement to be borne by each lot, tract, or parcel of land or other property, but a statement by the engineer or other officer, showing the estimated cost of such improvement per square foot, shall be deemed sufficient: Provided further, that when an assessment-roll is once prepared and does not include the cost of purchase, construction or reconstruction of works of delivery or distribution and the council of such city or town shall decide to raise a similar amount the ensuing year, it shall not be necessary to prepare a new assessment-roll, but the council may pass a resolution of intention estimating the cost for the ensuing year to be the same as the preceding year, and directing the clerk to give notice stating the estimated cost per square foot of all land within the district and refer persons interested to the books of the treasurer. The treasurer shall be present

at the hearing and shall note any changes or corrections on his books. The council shall have the same right to make changes or corrections in said assessment-roll as in an original assessment, and after all changes and corrections have been made the council shall, by ordinance, confirm said assessment and direct the treasurer to extend the same on the books of his office. [L. '15, p. 320, § 5.]

§ 9500. [8010-13.] Council Defined.

Whenever the word council is used in this act, it shall be construed to mean the council or other legislative body of such city or town. [L. '15, p. 321, § 6.]

§ 9501. [8010-14.] Repealing and Saving Clause.

Sections 8010-1 to 8010-7, both inclusive, of Rem. & Bal. Code are hereby repealed: Provided, that all actions and proceedings, which may be pending in any court under said law, and any proceedings under said law commenced by any city or town before the taking effect of this act, shall proceed without being in any manner affected by the passage of this act. [L. '15, p. 321, § 7.]

§ 9502. Operation of Waterworks Beyond City Limits.

Whenever any city or town in the state of Washington owns or has acquired, or may hereafter become the owner of or acquire any water utility, and shall desire to extend such utility beyond its corporate limits, it shall be lawful for such city or town to acquire, make, build, construct and maintain such extension, and to sell, dispose of and distribute its product or service to any other municipality, or to any person, firm or corporation, desiring to purchase the same. Such portion of such public utility that extends beyond the corporate limits of any city, shall be operated at such prices, and under such rules and regulations, as may be prescribed by the public service commission: Provided, however, the rights and obligations of existing franchises shall be maintained by the owner of such public utility: Provided further, that all cities and towns are hereby authorized to purchase, own and control franchises and distributing systems of water in other cities and towns. [L. '17, p. 38, § 1.]

§ 9503. Validation of Bonds for Public Utilities.

Whenever any city or town has heretofore issued or authorized to be issued by such vote of its electors as is required by law at any election duly and legally held to vote on such proposition, such utility bonds for the purpose of purchasing, paying for or acquiring any such utility as is described in this act, in every such case such utility bonds are hereby declared to be legal and valid, and such city or town is hereby authorized and empowered to proceed to issue and negotiate such bonds and to continue and conclude proceedings for the purchase or acquisition of such utility, and is hereby given full power to maintain and operate the same within all and every part of such contiguous territory whether incorporated or unincorporated. [L. '17, p. 39, § 2.]

§ 9504. Taxes Due on Purchased Plant, How Paid.

Whenever bonds have been authorized for the purchase of such utility as set forth in paragraph one herein, and such purchase price fails to include taxes which may or shall become due on any such utility, subsequent to the date of the election at which such bonds were authorized, then such taxes or the amount thereof may be paid by the said purchasing municipality in addition to the maximum sum authorized in the ordinance or proposition theretofore submitted to the electors and approved by them, without resubmitting to said electors the said proposition to pay said taxes or to purchase said plant at such increased cost; such additional sum for taxes may be paid by such utility out of the revenue of such system by issuing and negotiating water fund warrants against the revenue of such system, or in such manner as is authorized by law. [L. '17, p. 39, § 3.]

"Paragraph one herein," see § 9502, supra.

CHAPTER XXX.

DISPOSAL OF UTILITIES.

§ 9505. [8011.] Sale or Lease of--Authority Conferred.

Whenever any city or town in this state shall have purchased or constructed a system of waterworks, or a gas or electric light works, it shall be lawful for such city or town to sell such waterworks, or gas or electric light works, or to lease the same for a term of years, in the manner hereinafter prescribed. [L. '97, p. 297, § 1.]

§ 9506. [8012.] Declaration of Council.

The council of such city or town shall ascertain, and by resolution declare, that the system of waterworks, or gas or electric light works, which it is proposed to sell or lease, cannot be operated by such city or town, so as to repay the cost and expense of operation, and interest on the capital invested therein, and the necessary depreciation thereof, and that the same is, or threatens to become, a burdensome charge upon the taxpayers of such city or town. [L. '97, p. 297, § 2.]

§ 9507. [8013.] Disposition of Plant.

After the passage of such resolution, and at any time before the next general election of officers for such city or town, it shall be lawful for the legislative authority of such city or town, by ordinance, to provide for the lease of such waterworks, or gas or electric light works, upon such terms and conditions as such ordinance may prescribe, and after the passage of such resolution, the legislative authority of such city or town shall, by ordinance, submit to the qualified electors thereof at the general city election, the question whether such waterworks, or gas or electric light works shall be sold or not; and if at such election a majority of said electors voting upon said question shall vote in the affirmative, it shall be lawful for such legislative authority to provide for the sale of, and to sell such waterworks, or gas or electric light works, upon such

terms and conditions as such ordinance may prescribe. [L. '97, p. 298, § 3.]

§ 9508. [8014.] Confirmation of Former Sales or Leases.

Whereas, certain cities and towns in this state have heretofore sold or leased their waterworks and electric light works, all such sales and leases are hereby ratified and confirmed in so far, only, as that no question as to the validity of such sales or leases shall be hereafter raised upon the ground that at the date of such sales or leases there was no lawful authority for the making of the same in the charter of such city or town. [L. '97, p. 298, § 4.]

§ 9509. [8015.] Sale of Street Railway Lines Authorized.

It is and shall be lawful for any city or town in this state to sell and convey any line or lines of street railway, or street railway plant or plants with the equipment and appurtenances, of which any such city or town may be the owner, in the manner hereinafter prescribed. [L. '07, p. 166, § 1.]

§ 9510. [8016.] Vote on Question.

Whenever the council of such city or town shall deem it advisable to sell any such line or lines of street railway, or street railway plant or plants, with the equipment and appurtenances, such council shall, by ordinance, submit to the qualified electors of such city or town at any general or special city election the question whether such line or lines of street railway, or street railway plant or plants, with the equipment and appurtenances, shall be sold or not upon the terms and conditions to be specified in such ordinance; and if at such election three-fifths of said electors voting upon said question shall vote in the affirmative, it is and shall be lawful for such council to provide for the sale of, and to sell and cause to be conveyed any such line or lines of street railway, or street railway plant or plants, with the equipment and appurtenances, upon the terms and conditions mentioned in such ordinance. [L. '07, p. 166, § 2.]

§ 9511. [8017.] Validation of Prior Sales.

All sales and agreements of sale of any such line or lines of street railway, or street railway plant or plants, with the equipment and appurtenances, heretofore made or attempted to be made, by any such city or town, and all deeds and instruments of conveyance heretofore executed and delivered, or tendered, in behalf of any such city or town, for the purpose of carrying any such sale into effect, by authority of an ordinance of any such city or town, where the question whether such sale should be made was previously submitted to the qualified electors of such city or town in the manner provided in section 9510, and three-fifths of said electors voting upon such question voted in the affirmative, are hereby ratified and approved, and declared to have the same validity and effect as if this act had been in force at and prior to the time of the submission of such question to the qualified voters and the carrying out of the other proceedings concerning such sale, and at and prior to the time of the making of such sales and the execution and delivery, or tender, of such

deeds or instruments of conveyance; and any such sale or agreement of sale heretofore made or attempted to be made as aforesaid may be completed by the proper officers of such city or town with the same effect as if all the proceedings heretofore had and taken were had and taken after the passage of this act. [L. '07, p. 167, § 3.]

"Act" in this section refers to §§ 9509—9511.

§ 9512. Sale or Lease of Public Utilities.

It is and shall be lawful for any city or town in this state now or hereafter owning any water works, gasworks, electric light and power plant, steam plant, street railway line, street railway plant, telephone or telegraph plant and lines, or any system embracing all or any one or more of such works or plants or any similar or dissimilar utility or system, to lease for any term of years or to sell and convey the same or any part thereof, with the equipment and appurtenances, in the manner hereinafter prescribed. [L. '17, p. 573, § 1.]

§ 9513. Resolutions Proposing Sale or Lease—Notice—Bids—Referendum.

The legislative authority of such city or town, if it deems it advisable to lease or sell such works, plant or system or any part of the same, or any similar or dissimilar utility or system, shall adopt a resolution stating whether it desires to lease or sell the same. If it desires to lease, the resolution shall state the general terms and conditions of such lease, but not the rent. If it desires to sell the general terms of sale shall be stated, but not the price. The resolution shall direct the city or town clerk, or other proper official, to publish such resolution not less than once a week for four weeks in the official newspaper of the city or town if there be such an official newspaper, or if there be none then in any newspaper published in such city or town, or if there be none then in any newspaper published in the county in which such city or town is located, together with a notice calling for sealed bids to be filed with such clerk or other proper official not later than a certain time, accompanied by a certified check payable to the order of such city or town, for such amount as the resolution shall require, or a deposit of a like sum in money. Each bid shall state that the bidder agrees that if his bid be accepted and he fails to comply therewith within the time hereinafter specified, such check or deposit shall be forfeited to the city or town. If bids for a lease be called for bidders shall bid the amount to be paid as the rent for each year of the term of the lease. If bids for a sale and conveyance be called for the bids shall state the price offered. The legislative authority of the city or town shall have the right to reject any or all bids and to accept any bid which it deems best. At the first meeting of the legislative authority of the city or town held after the expiration of the time fixed for receiving bids, or at some later meeting if such legislative authority so decides, the bids shall be considered. In order for such legislative authority to declare it advisable to accept any bid it shall be necessary for two-thirds of all the members elected to such legislative authority to vote in favor of a resolution making such declaration. If such resolution be so adopted it shall be necessary, in order that such bid be accepted, to enact an ordinance accepting such bid and directing

the execution of a lease or conveyance by the mayor and city clerk or other proper official. Such ordinance shall not take effect until it shall have been submitted to the voters of such city or town for their approval or rejection at the next general election or at a special election called for that purpose, and a majority of the voters voting thereon shall have approved such ordinance. If approved it shall take effect as soon as the result of such vote be proclaimed by the mayor. If it be so submitted and fail to receive the approval of a majority of the voters voting thereon, it shall be rejected and annulled. It shall be the duty of the mayor to proclaim such vote as soon as it shall be properly certified. [L. '17, p. 573, § 2.]

§ 9514. Execution of Lease or Conveyance—Acceptance.

Upon the taking effect of any such ordinance the mayor and the city clerk or other proper official shall execute, in the name and on behalf of the city or town, the lease or conveyance directed by such ordinance. The lessee or grantee shall accept and execute the same within ten days after notice of its execution by the city or town or forfeit to the city or town the amount of the check or special deposit accompanying the bid of such lessee or grantee: Provided, that if litigation in good faith be instituted within such ten days to determine the rights of the parties, no forfeiture shall take place unless such lessee or grantee fail for five days after the termination of such litigation in favor of the city or town to accept and execute such lease or conveyance. [L. '17, p. 575, § 3.]

CHAPTER XXXI.

LOCAL IMPROVEMENT BONDS.

§ 9515. [8018.] Bonds for Local Improvements Authorized.

Whenever any city shall have power and authority vested in it by its charter or by any law of the state to order or cause the whole or any part of the streets, lanes, alleys, squares or public places of such city to be graded, regraded, planked, replanked, graveled, regraveled, piled, repiled, paved, repaved, macadamized, remacadamized, capped, recapped or to order or cause sidewalks, sewers, manholes, culverts, curbs, gutters, water-mains, or crosswalks to be constructed or to order or cause to be made any local improvements whatever, and to levy and collect assessments upon the property benefited thereby or abutting, adjoining, contiguous or approximate thereto, to defray the whole or any portion of the cost and expense of any such improvement, the proper authorities of such city may, in their discretion, provide for the payment of the cost and expense of such improvement by bonds of the district which shall include the property liable to assessment for the payment of the cost and expense of such improvement according to the charter of such city, issued to the contractor, or by the proceeds of such bonds to be issued and sold as hereinafter provided. [L. '99, p. 234, § 1.]

It was considered that this chapter supersedes L. '93, p. 231, §§ 1—5, except § 3, Bal. Code, §§ 1185—1189, as regards street improvement bonds, and except as expressly applied in later enactments: See *infra*, §§ 9529—9531 and notes.

See, also, note to § 9522.

Bonds for public utilities: See *supra*, § 9490, and notes.

Cited in 25 Wash. 300; 97 Wash. 196.

§ 9516. [8019.] Bonds—Issuance, Interest, Coupons, Payment, etc.

*Such bonds shall be issued only in pursuance of ordinances of the cities issuing the same, and by their terms shall be made payable on or before a date not to exceed ten years from and after the date of the issue of such bonds, which latter date may be fixed by resolution, by council or other legislative body of said city and shall bear such interest as may be provided in such ordinance, not exceeding eight per centum per annum, which interest shall be payable annually, or semi-annually, as may be provided by ordinance, and each bond shall have attached thereto interest coupons for each interest payment. Such bonds shall be in such denominations as shall be provided in the ordinance ordering their issue and shall be numbered from one upwards, consecutively, and each bond and coupon shall be signed by the mayor and attested by the clerk or comptroller of such city; Provided, however, that said coupons may in lieu of being so signed have printed thereon facsimile of the signatures of said officers and each bond shall have the seal of such city affixed thereto and shall refer to the improvement to pay for which the same shall be issued and to the ordinance ordering the same, each bond shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise. Such bonds shall not be issued in any amount in excess of the cost and expense of the improvement. [L. '99, p. 235, § 2.]

§ 9517. [8020.] Bonds—Sale—Issuance to Contractor.

The bonds issued under the provisions of this chapter or such portion of such bonds as may remain unsold if same is ordered as hereinafter provided may be issued to the contractor constructing the improvement in payment thereof, or the ordinance directing the issue of such bonds may provide that the same may be sold by some duly authorized officer or officers of the city, in the manner prescribed therein, at not less than their par value and accrued interest, and that the proceeds thereof shall be applied in payment of the cost and expense of the improvement. [L. '99, p. 236, § 3.]

Cited in 74 Wash. 444; 108 Wash. 582.

Sale of Bonds: See Remington's Digest, Mun. Corp., § 525.

Construction of statutory provision

against sale of municipal bonds for less than par. **Ann. Cas.** 1913E, 85; 35 **L. R. A. (N. S.)** 789; 39 **L. R. A. (N. S.)** 248.

§ 9518. [8021.] Assessments—Payment by Installment.

In all cases where any city shall issue bonds as provided in this chapter to pay the cost and expense of any local improvement, the said cost and expense shall be assessed against the lots and parcels of land, which under the provisions of law and the charter of such city, shall be liable therefor, but the ordinance levying such assessment shall declare that the sum charged thereby against each of such lots and parcels of land may be paid in equal annual installments; the number of which installments shall be equal to the number of years which the bonds issued to pay for the improvement may run, with interest upon the whole sum so charged at a rate fixed by said ordinance, and each year

thereafter one of such installments together with the interest due thereon and on all installments thereafter to become due shall be collected in the same manner as shall be provided by law and the charter and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued. [L. '99, p. 236, § 4.]

Municipal Bonds in General: See Remington's Digest, Mun. Corp., §§ 517—534, and cases cited.

§ 9519. [8022.] Removal of Lien by Payment in Full.

The owner of any lot or parcel of land charged with any such assessments may redeem the same from all liability for the contract price of such improvement by paying the entire assessment charged against such lot or parcel of land, without interest, within thirty days after notice to him of such assessment, which notice shall be given as follows: The city treasurer shall, as soon as the assessment-roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for ten consecutive daily or two consecutive weekly issues, that the said roll is in his hands for collection and that any assessment therein may be paid at any time within thirty days from the date of the first publication of said notice without penalty, interest or cost. The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days above mentioned, but may be issued at any time thereafter. The owner of any such lot or parcel of land may redeem the same from all liability for said assessment at any time after said thirty days by paying the entire installments of said assessment remaining unpaid and charged against such lot or parcel at the time of such payment, with interest thereon to the date of the maturity of the installment next falling due. In all cases where any assessment or any installment thereof is paid as herein provided the same shall be paid to the city treasurer, or to the officer whose duty it is to collect said assessments, and all sums so paid shall be applied solely to the payment of the cost and expense of such improvements or the redemption of the bonds issued therefor. [L. '99, p. 236, § 5.]

Cited in 44 Wash. 427.

Power to Issue: See Remington's Digest, Mun. Corp., § 517, and cases cited.

Payment and Interest: See Remington's Digest, Mun. Corp., § 533, and cases cited.

Where the purchaser of lots sold for street assessments fails to give the owner constructive notice by the payment of subsequent taxes, the owner may redeem the same at any time as though no sale had been made, under this section: *Loeb v. Asberry*, 44 Wash. 427, 87 Pac. 510.

§ 9520. [8023.] Foreclosure of Liens by Bondholders.

If the city shall fail, neglect or refuse to pay said bonds or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five per centum, together with the cost of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on which the

same are a lien may be joined as defendants in such suit. [L. '99, p. 237, § 6.]

§ 9521. [8024.] Bonds—Payment of Interest—Calls for.

The city treasurer shall pay the interest on the bonds authorized to be issued by this chapter out of the respective local improvement funds from which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds: Provided, that such bonds shall be called in and paid in their numerical order: Provided, further, that such call shall be made by publication in the city official newspaper on the day following the delinquency of the installment of the assessment or as soon thereafter as practicable, and shall state that bonds No. — (giving the serial number or numbers of the bonds called) will be paid on the day the next interest coupons on said bonds shall become due, and interest on said bonds shall cease upon such date. [L. '99, p. 238, § 7.]

§ 9522. [8025.] Act Concurrent.

Nothing herein shall be construed as repealing or modifying any existing law, manner or method for cities of the first class to issue bonds for local improvements, but shall be construed as an additional and concurrent power and authority. Any city whose charter provides for the issuance of bonds for local improvements, payable only from the proceeds of special assessments, is hereby authorized to issue such bonds in the manner provided in such charter, and the holder of any such bond shall look only to the fund provided by such assessment for the principal or interest of such bond. [L. '93, p. 235, § 4; L. '99, p. 238, § 8.]

A literal and comprehensive construction of this section seems to restrict its operation to laws or charters exclusively applicable to cities of the first class; and the intent to supersede §§ 9529—9531, as to all cities, seems clear from a comparison of the two acts, this section and Bal. Code, § 1188, being identical. See note to § 9515.

§ 9523. [8026.] Bonds not a Claim Against City.

Neither the holder nor owner of any bond issued under the authority of this chapter shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his remedy in case of nonpayment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each bond so issued. [L. '99, p. 238, § 9.]

Cited in 97 Wash. 196, 198.

Where local improvement bonds were issued under ordinances and this section, the city council had no power to provide for their payment, in case of a deficit, by the creation of a local improvement district surplus fund, made up from the

surplus moneys in the funds of improvement districts, the bonds to be assigned to the city, nor in any other way than as limited by law to the special assessments against the property: State ex rel. National Bank of Tacoma v. Tacoma, 97 Wash. 190, 166 Pac. 66.

§ 9524. [8027.] Certain Bonds may be Exchanged.

Whenever any city has heretofore issued bonds for the purpose of paying the cost and expense of local improvements, or has sold such bonds and paid such cost and expense from the proceeds thereof, such city may, with the consent of the holders of such bonds, exchange for them bonds authorized by this chapter. [L. '99, p. 239, § 10.]

§ 9525. [8028.] Ordinances Authorized.

Cities may pass general ordinances for the purpose of more effectually carrying this chapter into effect. [L. '99, p. 239, § 11.]

CHAPTER XXXII.

BONDS FOR WATERWORKS, ETC.

Query: Whether this chapter is not repealed by § 9488 to a certain extent at least.
Part of this chapter applicable to sewer bonds: See § 9529.

§ 9526. [8029.] May Construct by Entire City or District Assessment.

All cities and towns within the state, other than cities of the first class, where such cities are now empowered or may hereafter be empowered to construct waterworks for irrigation and domestic purposes, may do so either by the entire city or by assessment districts as the mayor and council of said city may determine. [L. '01, p. 238, § 1.]

§ 9527. [8030.] Adoption of Plans—Levy of Special Taxes.

Before letting any contract for the construction of any waterworks for irrigation and domestic purposes, the mayor and council shall by ordinance or resolution adopt the plans therefor and shall fix and establish the assessment districts, if the same is to be constructed at the expense of the district, and such cities and towns are hereby authorized to charge the expense of such waterworks for irrigation and domestic purposes to all the property included within such district which is contiguous or approximate to any streets in which any main pipe or lateral pipe of such waterworks for irrigation and domestic purposes, is to be placed, and to levy special taxes upon such property to pay therefor, which assessment and tax shall be levied in accordance with the last general assessment of the property within said district for city purposes. [L. '01, p. 239, § 2.]

§ 9528. [8031.] Method of Procedure.

The purpose of providing for, constructing and maintaining such waterworks for irrigation and domestic purposes and issuing bonds to pay therefor, such cities and towns are hereby authorized to proceed in all ways in accordance with, and apply all the provisions of the next three sections. [L. '01, p. 239, § 3.]

"The next three sections" substituted for the reference to the act of 1893.

§ 9529. [8032.] Installment Bonds—How Issued.

The mayor and council . . . may, in their discretion, provide for the payment of the costs and expenses thereof by installments, instead of

levying the entire tax or special assessment for such costs at one time, and for such installments they may issue, in the name of such city, improvement bonds of the district, which shall include the adjoining, contiguous and approximate property liable to assessment for such local improvement according to the city charter, payable in installments of equal amounts each year, none of which bonds nor any of the installments thereof shall run longer than ten years, nor bear interest exceeding nine per centum per annum. Such bonds may be issued to the contractor constructing the improvement in payment thereof, or the mayor and council, or by charter and ordinance of said city, other authorized officer or officers of said city, may sell the same at not less than their par value, net, and pay the proceeds thereof to the contractor. Such bonds shall not be issued in amount in excess of the contract price of the work or improvement, except that the installment coupons shall include the interest on such installments to the maturity thereof. The bonds shall be of such denominations as the mayor and council shall deem proper. Where district bonds are issued under this chapter for improvements, the cost of which is by law charged by special assessment against specific property, the mayor and council or other authorized officer, board or body shall levy special assessments each year sufficient to redeem the installments of such bonds next thereafter maturing, but in computing the amount of special assessment to be levied against each piece of property liable therefor, interest thereon at a rate not exceeding nine per centum per annum from the date of the issuance of said bonds until the maturity of the installment of bonds next thereafter maturing. Such assessments shall be made upon the property chargeable for the cost of such improvements, respectively, and shall be levied and collected in the same manner as may be provided by law and the charter and ordinance of such city for the levy and collection of special assessments for such improvements where no bonds are issued, except as otherwise provided by this chapter. But the basis of such assessment, whether upon assessed valuation, frontage or otherwise liable for such costs, shall be retained for the assessment of succeeding installments of said bonds. The owner of any piece of property liable to any such special assessment may redeem his property from such liability by paying the entire assessment chargeable against his property (upon the city clerk mailing him a written or printed notice) thirty days before the issuance of the bonds, or after the issuance of the bonds by paying all the installments of the assessments which have been levied and also the amount of unlevied installments with interest on the latter at the rate of eight per centum per annum from the date of the issuance of the bonds to the time of maturity of the last installment. In all cases where installments of assessments not yet levied and paid as above provided, whether before or after the issuance of the bonds, the same shall be paid to the city treasurer, who shall receipt therefor, and all sums so paid shall be applied solely to the payment of such improvements or the redemption of the bonds issued therefor. Where any piece of property has been redeemed from liability for the cost of any improvement as herein provided, such property shall not thereafter be liable for further special assessment for the cost of such improvement except as hereinafter provided. No suit to set aside the said special assessment or to enjoin the making of the same

shall be brought, nor any defense to the validity thereof be allowed after the expiration of thirty days from the time the amount due on each lot or piece of ground liable for such assessment is ascertained and confirmed by the council. The funds raised by such assessments shall be applied solely towards the redemption of said bonds. [L. '93, p. 231, § 1.]

"This chapter" refers only to the following sections of this chapter.

Part of this section is omitted. This section originally related to street improvements, and is superseded by §§ 9515—9525, supra, except as adopted in § 9528 for the issuance of water bonds. See, also, notes to §§ 9515, 9522.

Cited in 6 Wash. 336; 14 Wash. 487; 18 Wash. 320; 19 Wash. 670; 22 Wash. 652.

§ 9530. [8033.] Bonds Issued to Contractor Transfers City's Lien.

Such bonds, when issued to the contractor constructing the improvement in payment therefor, or when sold as above provided, shall transfer to the contractor or other owner or holder all the right and interest of such city in and with respect to every such assessment, and the lien thereby created against the property of such owners assessed as shall not have availed themselves of the provisions of this chapter in regard to the redemption of their property as aforesaid, shall authorize said contractor and his assigns and the owners and holders of said bonds to receive, sue for and collect or have collected every such assessment embraced in any such bond by or through any of the methods provided by law for the collection of assessments for local improvements. And if the city shall fail, neglect, or refuse to pay said bonds, or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs, and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. And such bonds shall be equal liens upon the property for the assessments represented by such bonds without priority of one over another to the extent of the several assessments against the several lots and parcels of land. [L. '93, p. 233, § 2.]

See notes to § 9529.

Under this section, moneys arising from an assessment to pay any installment coming due cannot be applied to the payment of bonds which have matured prior thereto and which remain partly unpaid by reason of failure to fully collect the assessments levied to meet them: *Baker v. Meacham*, 18 Wash. 319, 51 Pac. 404.

This section literally requires payment by a party wishing to redeem property from the lien of a local improvement bond, of the amount of principal and interest

on all assessments, at the date of maturity of the last annual installment, which is in excess of the amount due on the bond, and as neither the bondholder nor the city would be entitled to the excess, and there is no provision made for its application except solely to the redemption of the bonds, the statute must be construed as entitling the owner to redeem upon payment of the principal and all interest, if payment were to be made annually: *State ex rel. Embree v. Rathburn*, 22 Wash. 651, 62 Pac. 85.

§ 9531. [8034.] Remedy for Nonpayment.

The holder of any bond issued under the authority of this chapter shall have no claim therefor against the city by which the same is issued,

in any event, except from the collections of the special assessment made for the improvement for which such bond was issued, but his remedy, in case of no[n]payment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on the face of each bond so issued. [L. '93, p. 235, § 5.]

See notes to § 9529, *supra*.

CHAPTER XXXIII.

INDEBTEDNESS AND FUNDING BONDS.

See, also, "Finance," § 5599 et seq.

Indebtedness and bonds for public utilities: See § 9488.

§ 9532. [8035.] Limitations on Indebtedness.

Any city or town having a corporate existence in this state at the time of the adoption of the Constitution thereof is hereby authorized and empowered to borrow money and to contract indebtedness in any other manner for general municipal purposes, not exceeding in amount, together with the existing general indebtedness of such city or town, one and one-half per centum of the taxable property in such city or town, to be ascertained by the last assessment for state and county purposes, previous to the incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, whenever it is deemed advisable to do so by the city or town council thereof. [L. '90, p. 225, § 1; 1 H. C., § 702.]

See Const., Art. VIII, § 6, limitation of municipal indebtedness.

See *supra*, § 4116, warrants and order of payment.

See notes to § 5575 et seq., limitation of county indebtedness, etc.

See notes to § 9489, *supra*, bonds for public utilities.

See *supra*, § 9490, limit of indebtedness.

Cited in 1 Wash. 298, 300, 304, 311, 318; 2 Wash. 585, 588, 592; 6 Wash. 145; 7 Wash. 70.

Limitation on Indebtedness: See Remington's Digest, Mun. Corp., §§ 482—495, and cases cited.

What is "emergency" within exception to limitation of municipal indebtedness. 17 A. L. B. 586.

What is municipal indebtedness within the meaning of prohibitions against incurrence. 44 Am. St. Rep. 229; 23 L. R. A. 402; 37 L. R. A. (N. S.) 1058.

Right of municipality to enter into contract for public improvements with deferred payments, where debt exceeds authorized debt limit. 17 Ann. Cas. 420.

Right of municipal corporation to secure public utilities by piecemeal

to avoid constitutional debt limit. 12 L. R. A. (N. S.) 433.

Rule for determining municipal indebtedness, within the meaning of debt limit provisions, where boundaries of different political units are wholly or partly coincident. L. R. A. 1917E, 468; Ann. Cas. 1912C, 449.

Statute creating municipal liability for mob or riot as violating constitutional debt limitation. 13 A. L. B. 757.

Refunding bonds as indebtedness within meaning of debt limit provisions. 37 L. R. A. (N. S.) 1099.

Right of municipality to contract for periodical payments throughout term of years, where aggregate payments exceed authorized debt limit. 7 Ann. Cas. 150; Ann. Cas. 1913B, 1177.

§ 9533. [8036.] Increased Indebtedness, Contracted How.

Any such city or town may borrow money or contract indebtedness for strictly municipal purposes over the amount specified in the preceding section, but not exceeding in amount, together with the existing general in-

debtedness, five per centum of the taxable property in such city or town, to be ascertained as provided in the preceding section, through the council of such city or town, whenever three-fifths of the voters therein assent thereto, at an election to be held for that purpose, at such time, upon such reasonable notice, and in the manner presented by the city or town council, not inconsistent with the general election laws. [L. '90, p. 225, § 2; 1 H. C., § 703.]

See *supra*, §§ 9488—9492, power of cities to incur indebtedness for public utilities, and repealing all acts in conflict therewith.

Cited in 1 Wash. 300; 2 Wash. 589; 3 Wash. 195—197, 225—227; 4 Wash. 402, 443, 633; 5 Wash. 262.

Power of municipality to borrow money or incur indebtedness for public improvements. 6 Ann. Cas. 760; Ann. Cas. 1913D, 77.

§ 9534. [8037.] Increased Indebtedness for Water, Light and Sewers.

Any city or town described in section 9532 shall, in addition to the power granted in the preceding sections, have the power, through its council, to borrow money or to contract indebtedness in an amount not exceeding five per centum of the taxable property in such city or town, ascertained as provided in section 9532, for the purpose of supplying such city or town with water, artificial light, or sewers, when the plant or plants used for such purposes shall be owned and controlled by the city, whenever three-fifths of voters therein assent thereto at an election to be held for that purpose, according to the provisions of the last preceding section. [L. '90, p. 225, § 3; 1 H. C., § 704.]

See notes to § 9539, *infra*.

See *supra*, § 9488 et seq., and notes, power to acquire public utilities and issue bonds.

Cited in 1 Wash. 300; 2 Wash. 589.

§ 9535. [8038.] City or Town may Fund Its Indebtedness.

Any city or town of the description of those included in section 9532 may fund its indebtedness at any time, in such a manner, for such time, and upon such terms and interest as its council may deem advisable: Provided, that the indebtedness funded shall not, with all the existing indebtedness, exceed in amount one and one-half per centum of the taxable property, thereof, ascertained as provided in section 9532, unless such indebtedness shall have been authorized by the assent of three-fifths of the voters of such city or town, as hereinbefore provided. [L. '90, p. 226, § 4; 1 H. C., § 705.]

See, also, *supra*, §§ 5599—5623, funding and refunding bonds for cities and counties.

Cited in 7 Wash. 73.

§ 9536. [8039.] Existing Indebtedness Valid to What Extent.

Any indebtedness now owing by any such city or town, contracted strictly for municipal purposes, whether the same exceeds the amount which such city or town was authorized to contract under its charter or not, is hereby validated and declared to be a binding obligation upon such city or town when the only ground of the invalidity of such indebtedness is that it exceeds the amount authorized by the charter of such city or town: Provided, that if said indebtedness exceeds one and one-half per

centum, including present indebtedness, upon the taxable property therein, to be ascertained as hereinbefore provided, then such indebtedness shall not be deemed to be validated by this chapter till three-fifths of the voters in such city or town shall assent to the same, at an election held for that purpose, in the manner provided by section 9533: Provided further, that the indebtedness ratified, including all existing indebtedness, shall not exceed in amount five per centum upon the taxable property in such city or town, ascertained as hereinbefore indicated: And provided further, that this section shall only apply to indebtedness now existing. [L. '90, p. 226, § 5; 1 H. C., § 706.]

"Chapter" substituted for "act."

See supra, § 5609 et seq., validating indebtedness.

See supra, § 8909, proceedings for.

Cited in 2 Wash. 585; 7 Wash. 71; 13 Wash. 705.

§ 9537. [8040.] Construction of Statute.

When this chapter comes in conflict with any provision, limitation, or restriction in any local or special law or charter existing at the time that the Constitution of the state of Washington was adopted, this statute shall govern and control. [L. '90, p. 227, § 6; 1 H. C., § 707.]

"Chapter" substituted for "act."

§ 9538. [8041.] Council may Contract Indebtedness, Limit of.

Each and every incorporated city or town in this state, and each and every city or town that may hereafter be incorporated in this state, is hereby authorized and empowered, by and through its council, to contract indebtedness or borrow money for strictly municipal purposes on the credit of such corporation, and to issue negotiable bonds therefor, whenever the council of such city or town deems it advisable, not exceeding an amount, together with the existing indebtedness of such city or town, of one and one-half per centum of the taxable property of such city or town, to be ascertained by the last assessment for city or town purposes previous to the incurring of such indebtedness: Provided, however, that such council shall not create, audit, allow, nor permit to accrue any debts or liabilities in excess of such amount as hereinafter provided. [L. '91, p. 261, § 1; 1 H. C., § 708.]

See supra, § 5628, warrants when limit exceeded.

See supra, §§ 9488—9492, indebtedness for public utilities, a later enactment, with repealing clause.

This act, that of March 7, '91, embraced in §§ 9538—9549, both inclusive, does not apply to cities of the first class: See § 9549, infra.

§ 9539. [8042.] Excess may be Contracted, When and How.

Whenever the council of any such city or town shall deem it advisable that such city or town of which they are such officers shall, for strictly municipal purposes, create an indebtedness or borrow money, and issue its negotiable bonds therefor in an amount which, taken together with the existing indebtedness of such city or town, exceeds the amount specified in the preceding section, the council shall provide therefor by ordinance, which ordinance shall state the amount of such indebtedness

so **desired** to be created, or the amount of money so desired to be borrowed, as the case may be, and the same shall be submitted for the ratification or rejection to the qualified electors of such city or town at a **special** election, of which fifteen days' notice shall be given in the paper doing the city printing, by publication in each issue of said paper during said **time**. [L. '91, p. 261, § 2; 1 H. C., § 709.]

See **note** to last section.

See **supra**, § 5624, borrowing in anticipation of revenue.

See **supra**, § 5626, temporary loans.

§ 9540. [8043.] Election.

Said election shall be conducted consistent with the general election laws of this state. If the question submitted at such election be that of creating an indebtedness other than that of borrowing money, the ballots used shall contain, in substance, the following: "Shall the city of, or town of (as the case may be), for [here state purpose], incur an indebtedness of \$——? Indebtedness, Yes. Indebtedness, No." The elector shall so prepare said ballot by striking therefrom the words "Indebtedness, Yes," or "Indebtedness, No," so that the remaining portion of said ballot shall express his vote on said question. If the question submitted at such election be that of borrowing money and issuing negotiable bonds therefor, the ballots used shall contain, in substance, the following: "Shall the city of, or town of (as the case may be), for municipal purposes, borrow \$——, and issue its negotiable bonds therefor? Bonds, Yes. Bonds, No." The elector shall so prepare said ballot, by striking therefrom the words "Bonds, Yes," or "Bonds, No," so that the remaining portion of said ballot shall express his vote on said question. [L. '91, p. 261, § 3; 1 H. C., § 710.]

See **supra**, § 5610, election to determine validation.

See **supra**, notes to §§ 9536, 9537.

In **General**: See Remington's Digest, Mun. Corp., § 490.

§ 9541. [8043-1.] Special Election—Time for Voting.

At any special election held in any city for the purpose of submitting to the qualified electors any proposition or propositions to incur municipal indebtedness and to issue negotiable bonds therefor, the polls shall open and close at the same hours fixed by the laws of the state of Washington for the opening and closing of the polls at elections where national, state, county or municipal officers are elected, any provision in the charter of any such city to the contrary notwithstanding. [L. '11, p. 110, § 1.]

§ 9542. [8044.] Bonds Issued, When—Limitation of Amount—Purpose.

If three-fifths of the legal ballots cast on said question of incurring such indebtedness be in favor of "Indebtedness, Yes," the council of such city or town must incur such indebtedness in due and legal form. If three-fifths of the legal ballots cast on said question of issuing bonds be in favor of "Bonds, Yes," said city or town shall be deemed to be authorized to borrow the amount of money so voted for, and issue its negotiable bonds therefor, and it shall be the duty of the council of such city or

town so to do; subject, however, to the condition that the total indebtedness herein provided for shall not exceed in amount, together with the existing indebtedness of such city or town, five per centum of the taxable property of such city or town, to be ascertained by the last assessment of such city or town for city or town purposes previous to the incurring of such indebtedness: And provided further, that no portion of the money by this act authorized to be borrowed shall ever be used for other than strictly municipal purposes. [L. '91, p. 262, § 4; 1 H. C., § 711.]

See supra, §§ 5617—5634, funding bonds, etc. .

See notes to §§ 9532, 9533, supra.

See note to § 9538, bonds for public utilities.

Amount and Purpose: See Remington's Digest, Mun. Corp., §§ 487—489, 490, and cases cited.

§ 9543. [8045.] Amounts, Denominations, Interest, etc.

All bonds, whether issued by authority of the council alone, as in section 9538 such council is empowered to do, to the amount therein provided, or issued in pursuance of the special election herein provided for, shall be issued in denominations of not less than one hundred or more than one thousand dollars; shall be numbered from one up, consecutively; shall bear the date of their issue; shall be payable not more than twenty years from date, and shall bear interest not exceeding six per cent per annum, payable semi-annually, with interest coupons attached, and the principal and interest shall be payable at such place as may be designated in said bonds. The bonds and each coupon shall be signed by the mayor, and attested by the clerk under the seal of the city or town. [L. '91, p. 262, § 5; 1 H. C., § 712.]

See note to last section.

§ 9544. [8046.] Preparation and Printing.

Said bonds shall be printed or engraved or lithographed on good bond paper, and a copy of this act, together with the ordinance of the city or town authorizing and directing such special election when such bonds are issued in pursuance of an election, shall be printed on each bond, together with a statement signed by the mayor and clerk of such city or town, showing the result of such election: Provided, that where bonds are issued by the council pursuant to section 9538, and without an election, a copy of this act, together with the ordinance authorizing the borrowing of such money and the issuing of such bonds, shall be printed on each bond; which ordinance shall contain a statement showing the assessed valuation of all the taxable property of such city or town, to be ascertained by the last assessment for city or town purposes previous to the date of the passage of such ordinance, together with the amount of the existing indebtedness of such city or town at the date of the passage of such ordinance, which indebtedness shall include the amount for which such bonds are issued, and also a statement signed by the mayor and clerk of such city or town showing that such ordinance was passed by the votes of at least four councilmen, and also the date of

the approval and publication of such ordinance. [L. '91, p. 263, § 6; 1 H. C., § 713.]

See note to § 9538.

Cited in 4 Wash. 134.

§ 9545. [8047.] Bonds, How to be Sold—Register of.

Such bonds shall be sold in such manner as the corporate authorities shall deem for the best interest of the city or town. The treasurer of such city or town shall keep a register of all bonds, which register shall show the number, date, amount, interest, name of payee, and when and where payable, of each and every bond executed, issued, or sold under the provisions of this act. [L. '91, p. 263, § 7; 1 H. C., § 714.]

See note to § 9538.

§ 9546. [8048.] Sinking Fund Tax.

There shall be levied each year upon the taxable property of such city or town, as the case may be, in addition to the tax for other purposes in said city or town, a tax sufficient to pay the interest on such bonds as the same accrues, and before seven years prior to the maturity thereof, an annual sinking fund tax sufficient for the payment of said bonds at maturity, which taxes shall become due and collectible as other taxes. [L. '91, p. 264, § 8; 1 H. C., § 715.]

See note to § 9538.

See *supra*, § 5635 et seq., funds in cities.

See *supra*, §§ 5637, 5638, tax levy for current expenses and indebtedness.

§ 9547. [8049.] Remedy of Bondholder on Default of Payment.

If the council of any city or town which has issued bonds under the provisions of this act shall fail, neglect, or refuse to make the levy necessary to pay the bonds and interest coupons at maturity, and the same shall have been presented to the treasurer of such city or town, and payment thereof refused because of such failure, neglect, or refusal to make such levy, the owner may file such bond, together with all unpaid coupons, with the auditor of the county, in which such city or town is situated, taking his receipt therefor, and the same shall be registered in the auditor's office of such county in like manner and form as the same was originally registered by the treasurer of the city or town issuing the same; and the county commissioners of such county shall, at their next session thereafter at which they shall levy the annual county tax, and each annual levy thereafter, add to the county tax to be levied in said city or town a sufficient rate to realize the amount of principal and interest past due and to become due prior to the next annual levy, and the same shall be collected as part of the county tax and paid into the county treasury and passed to the credit of such city as a bond tax, and shall be paid by the treasurer of the said county, on warrants drawn by the county auditor as the payments mature, to the holder of such bond, as shown by the register of the county auditor, until the same shall be fully satisfied and discharged: Provided, that nothing in this section shall be construed to limit or postpone the right

of any holder of any such bonds to resort to any other remedy which such holder might otherwise have. [L. '91, p. 264, § 9; 1 H. C., § 716.]

See note to § 9538.

§ 9548. [8050.] Construction of Chapter.

The provisions of this act shall not be construed as applying to borrowing money and issuing bonds by any city or town for the purpose of supplying such city or town with water, artificial light, and sewers, or either or both or all such waterworks, artificial light, or sewers, where the works for supplying such water, light, and sewers shall be owned and controlled by such city or town; but in all things relating to such named purposes, the provisions and amendments thereto of an act entitled "An act authorizing cities and towns to construct internal improvements and to issue bonds to pay therefor, and declaring an emergency," which said act was approved March 26, 1890, shall be and remain in full force and effect. [L. '91, p. 264, § 10; 1 H. C., § 717.]

See note to § 9538.

The act of March 26, 1890, referred to in this section, is superseded by § 9488 et seq.

§ 9549. [8051.] Not to Apply to Cities of First Class.

The provisions of this act shall not be construed as in any manner applying to cities of the first class. [L. '91, p. 265, § 11; 1 H. C., § 718.]

See note to § 9538.

§ 9550. [8052.] Funding or Ratifying Debt—Question—How Submitted.

At any election which may be held in any city or town in this state in accordance with the Constitution and laws thereof, for the purpose of voting upon the question of ratifying any indebtedness of such city or town, theretofore attempted to be incurred by such city or town, such city or town may submit to the voters thereof any proposition to fund such indebtedness so sought to be ratified, or any existing indebtedness of such city or town, or both. The proposition to ratify such indebtedness and the proposition to fund the same may be submitted to the voters in such city or town by the corporate authorities thereof in the same or in separate ordinances, as may be required or permitted by law; but the proposition to fund shall be the subject of a distinct vote in favor of or against the same, separate from the vote upon the proposition to ratify, and separate from the vote upon a proposition to fund any part of such indebtedness as to which a proposition to ratify is not submitted. [L. '91, p. 269, § 1; 1 H. C., § 722.]

See supra, §§ 5599, 5609, 5617.

§ 9551. [8053.] Effect of Vote to Fund Validated Indebtedness.

If at any such election any such indebtedness so proposed to be ratified shall be validated in accordance with the requirements of the Constitution and statutes of this state, any vote cast at such election in accordance with the requirements of the last preceding section, upon a

proposition to fund such indebtedness so validated, by the issuing of bonds therefor, shall have the same effect as an assent to or dissent from the funding of such indebtedness, as if such indebtedness had been validated previously to the passage of the ordinance submitting such proposition to fund the same. [L. '91, p. 270, § 2; 1 H. C., § 723.]

This act is composed of this and the last section.

CHAPTER XXXIV.

INDEBTEDNESS UPON ANNEXATION OR CONSOLIDATION.

§ 9552. [8054.] Ratification of Indebtedness.

In any case where any city or town formerly having a corporate existence in this state has since or may hereafter become consolidated according to law, with any other city or town formerly having a corporate existence in this state, or has annexed or may hereafter annex any new territory and where the corporate authorities of either such former city or town had prior to such consolidation or annexation attempted to incur any indebtedness on the part of such former city or town by the issuing of warrants, making of contracts, or creation of other evidences of indebtedness on the part of such former city or town by the corporate authorities thereof, such attempted incurring of any such indebtedness may be ratified and validated in the manner prescribed in this chapter, when the only ground of the invalidity of such indebtedness so to be ratified is that, at the time of such attempted incurring thereof, the same, together with all other then existing indebtedness of such former city or town, exceeded one and one-half per centum of the taxable property of any such former city or town, ascertained by the last assessment for city or town purposes previous to the attempted incurring of such indebtedness, and that such indebtedness was so attempted to be incurred, without the assent of three-fifths of the voters of such former city or town, voting at an election held for that purpose. [L. '93, p. 56, § 1.]

See *supra*, § 8909, and notes, consolidation of cities and towns.

Effect of Consolidation: See Remington's Digest, Mun. Corp., § 15, and cases cited.

Liability of territory annexed to city to pay proportionate share of existing debts. 27 L. B. A. (N. S.) 1147.

§ 9553. [8055.] Council may Ratify, How.

In any case mentioned in the last section whenever the city council or other legislative body of any consolidated or existing city or town, consisting in part of any such former city or town, or which has annexed, or may hereafter annex any new territory, as in said section mentioned, shall deem it advisable that the ratification authorized by this chapter shall be obtained, the city council or other legislative body of such consolidated or existing city or town, shall provide for such ratification by ordinance, which shall specify separately, the amount of each distinct class of indebtedness so to be ratified, the date or period of the attempted incurring of each separate class thereof by the corporate authorities of such former city or town (naming it), and the general

nature of the indebtedness comprised in each such distinct class, and shall provide for the holding of an election for that purpose, of which thirty days' notice, to be provided for in such ordinance, shall be given in the official newspaper or newspapers of such consolidated or existing city or town, at which election the attempted incurring of such indebtedness shall be submitted, for ratification or disapproval, to the voters residing within the former corporate limits of such former city or town, the indebtedness whereof is sought to be so ratified, or within the corporate limits of such city or town prior to such annexation. Each distinct class of such indebtedness so specified shall be the subject of a distinct vote in favor of or against the ratification, and such vote shall designate the class of indebtedness referred to by the description thereof used and the amount specified in the ordinance. [L. '93, p. 57, § 2.]

§ 9554. [8056.] Election—How Conducted.

The city council or other legislative body of such consolidated or existing city or town shall, in the ordinance providing for such election, or in a separate ordinance or ordinances, provide for altering or dividing any existing election precinct or precincts therein, if necessary, so that no precinct embracing any part of the territory lying within the former corporate limits of such former city or town, the indebtedness whereof is sought to be so ratified, shall embrace any territory not lying within such former corporate limits of such former city or town; and shall likewise provide for the segregation by the city clerk of the names of voters registered for the current year in the existing registration lists in such consolidated or existing city or town, and for the making, by copying from such existing registration lists, of new poll-books of registration, so far as may be necessary, and for the making of further registration according to law in such new poll-books, so as to enable the city clerk to prepare, certify and deliver to the judges of said election in any such altered or divided precinct, according to law, a true and correct copy of such new poll-book, containing the names of the voters, and no others, entitled to vote at such election in such altered or divided precinct; and appoint inspectors and judges of such election for the several precincts in which the same is to be held; and prescribe the form of the ballot to be used at such election, and the mode of the voter's indicating thereon his vote for or against each proposition submitted. Said provisions shall be made in conformity with the existing registration and election laws of the state as nearly as may be, but the provisions hereof shall prevail over existing laws so far as may be necessary to effectuate the purposes of this chapter; and such election shall be held and conducted, and the result thereof canvassed and declared, in accordance with the general laws of the state as modified by this chapter, and in accordance with said provisions to be made in pursuance hereof. [L. '93, p. 58, § 3.]

§ 9555. [8057.] Vote Required—Effect of.

If at an election held as provided for in this chapter, three-fifths of the voters residing within the former corporate limits of such former city or town, the indebtedness whereof is so sought to be ratified, and

voting at such election, shall vote in favor of the ratification of any distinct class or classes of such indebtedness, and if at the same or a separate election a proposition to fund said separately specified classes of such indebtedness so sought to be ratified, or any of said classes thereof shall be submitted in pursuance of any law of this state, to all the voters in such consolidated or existing city or town, and if three-fifths of the voters in such consolidated or existing city or town voting at such election shall vote in favor of the funding of such indebtedness, or any distinct class or classes thereof, in favor of the ratification of which the voters residing within the former corporate limits of the former city or town shall cast or shall have cast the necessary vote as herein provided, then said indebtedness, or said distinct class or classes thereof, in favor of which such votes shall have been cast as aforesaid, shall thereby become and is hereby declared to be validated, and a binding obligation of such former city or town, in force from the time of the attempted incurring thereof so ratified, bearing such interest, if any, and from such time, as it would have borne if legally incurred in the first instance, and assumed by the consolidated or existing city or town as such indebtedness of the former city or town: Provided, that no property within any part of such consolidated or existing city or town, not embraced within the former corporate limits of the former city or town, the indebtedness whereof is so ratified, shall ever be taxed to pay any portion of any indebtedness of such former city or town so ratified, or any interest thereon: And provided further, that neither anything in this chapter contained, nor the vote or votes cast at any such election or elections as aforesaid, shall be deemed to validate or authorize any indebtedness which, together with all other indebtedness of such former city or town existing at the time of the attempted incurring of the same, exceeded any constitutional or statutory limitation of indebtedness which might be incurred with the assent of three-fifths of the voters in such former city or town, voting at an election to be held for that purpose: And provided further, that this chapter shall apply only to indebtedness attempted to be incurred prior to the passage of this act. [L. '93, p. 59, § 4.]

§ 9556. [8058.] Funding Indebtedness.

If, in any case where any city or town in this state has been or may hereafter be formed by the consolidation of two or more cities or towns, or has annexed or may hereafter annex any new territory, an election shall be held, in accordance with the Constitution and laws of this state, for the purpose of submitting to the voters residing within the former corporate limits of either such former city or town, or of such city or town prior to such annexation, for ratification or disapproval, the attempted incurring on the part of such former city or town or of such city or town prior to such annexation by the corporate authorities thereof, of any indebtedness thereof, such consolidated or existing city or town may submit to all of the voters therein, at the same or a separate election, any proposition to fund such indebtedness so sought to be ratified or any part thereof or any existing indebtedness of such consolidated or existing city or town, or both. The proposition to

ratify any such indebtedness so previously attempted to be incurred on the part of either such former city or town, or on the part of such city or town prior to such annexation, and the proposition to fund the same may be submitted, respectively, to the voters residing within the corporate limits of such former city or town or in such city or town prior to such annexation, and to all the voters in such consolidated city or town, respectively, in the same or in separate ordinances, as may be required or permitted by law; but the proposition to fund shall be the subject of a distinct vote in favor of or against the same, separate from the vote upon the proposition to ratify, and separate from the vote upon a proposition to fund any part of such indebtedness as to which a proposition to ratify is not submitted. [L. '93, p. 108, § 1.]

§ 9557. [8059.] Effect of Vote Cast.

If at any such election any such indebtedness so proposed to be ratified shall be validated in accordance with the requirements of the Constitution and laws of this state, any vote cast at the same or a separate election in accordance with the requirements of the last section, upon a proposition to fund such indebtedness so validated, by the issuing of bonds therefor, shall have the same effect as an assent to or dissent from the funding of such indebtedness, as if such indebtedness had been validated previously to the passage of the ordinance submitting such proposition to fund the same. [L. '93, p. 109, § 2.]

§ 9558. [8060.] Elections, How Conducted.

Any alteration or division of any existing election precinct or precincts in such consolidated or existing city or town, and any segregation of the names of voters registered for the current year in the existing registration lists in such consolidated or existing city or town, and any new poll-books of registration, and any further registration in such new poll-books, which may be made for the purposes of any such election held to submit a question of ratification, as aforesaid, in accordance with any law authorizing such election to submit such question of ratification, shall so far as applicable govern the holding of the election herein authorized to submit a proposition or propositions to fund. The city council or other legislative body of such consolidated or existing city or town shall, in the ordinance providing for the election herein authorized, or in a separate ordinance or ordinances, appoint inspectors and judges of such election for the several precincts in said city or town, and prescribe the form of the ballot to be used at such election, and the mode of the voter's indicating thereon his vote for or against each proposition submitted. Said provisions shall be made in conformity with the existing registration and election laws of the state as nearly as may be, but the provisions hereof shall prevail over existing laws so far as may be necessary to effectuate the purposes of this chapter; and the election herein authorized shall be conducted and the result thereof canvassed and declared in accordance with the general laws of the state as modified by this chapter, and in accordance with said provisions to be made in pursuance hereof. [L. '93, p. 109, § 3.]

CHAPTER XXXV.

FIREMEN'S PENSION FUND.

§ 9559. Board of Trustees—Members—Duties—Terms.

The mayor, clerk or comptroller and three members of the common council of every incorporated city or town in the state of Washington, who, in addition to the duties now required of them, are hereby created and constituted, together with six (6) members from the fire department of such city or town, a board of trustees of the "Firemen's Relief and Pension Fund" of the fire department of such incorporated city or town, and shall provide for the disbursement of such relief and pension fund, and shall designate the beneficiaries thereof, as hereinafter directed, which board shall be known as the board of trustees of the firemen's relief and pension fund, and upon the taking effect of this act, the fire department of each such incorporated city or town shall elect by ballot, six (6) members of such fire department, two (2) of whom shall serve for the term of one (1) year, two (2) for the term of two (2) years, and two (2) for the term of three (3) years, and thereafter such fire department shall, each year, elect by ballot two (2) of its members to serve for the term of three (3) years upon said board of trustees: Provided, that in incorporated cities and towns having no council three (3) persons holding office therein, other than the mayor and clerk, shall be elected as trustees of the firemen's relief and pension fund of such city or town by the other members of the board of trustees, and: Provided further, that the boards of trustees of said fund, now acting in any city or town shall continue to act until their term has expired: Provided, this act shall not apply to any city or town where no paid fire department is maintained. [L. '19, p. 668, § 1. Cf. L. '09, p. 88, § 1.]

Cited in 93 Wash. 468.

The act for the relief and pension of firemen, Rem. 1915 Code, section 8061 et seq., conferred upon the pension board power to determine who are entitled to a fixed pension, as well as to determine who are entitled to temporary relief: State ex rel. Criswell v. Board of Trustees of the Firemen's Relief and Pension Fund, 93 Wash. 468, 161 Pac. 361.

The act for the relief and pension of firemen is not a vested right subject to

determination by the courts, since the legislature vested the pension board with full power and authority to determine any inquiry as to who are entitled to the benefit of the act, and made its conclusion final, and the legislature had the power to pass such act: State ex rel. Criswell v. Board of Trustees of the Firemen's Relief and Pension Fund, 93 Wash. 468, 161 Pac. 361.

Validity of statute providing compensation or pension to injured fireman. Ann. Cas. 1917C, 1140.

§ 9560. Officers of Board—Secretary's Annual Reports.

The mayor shall be ex-officio chairman, the city clerk or comptroller shall be ex-officio secretary, and the city treasurer shall be ex-officio treasurer of said board. The secretary shall report annually, at the time of making his annual report as city clerk, the condition of the firemen's relief and pension fund, and the receipts and disbursements on account of the same, with a full list of the beneficiaries of said fund, and the amount paid them. [L. '19, p. 669, § 2. Cf. L. '09, p. 89, § 2.]

§ 9561. Board—Monthly Meetings, etc.—Disbursement of Fund.

The board herein provided for shall hold monthly meetings on or before the fifteenth day of each and every month of each year, upon such dates as may be agreed upon by the board of trustees, and upon the call of its chairman at such other times as the chairman deems necessary: It shall issue orders, signed by its chairman and secretary, to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board, which order shall state for what purpose such payment is to be made. It shall keep a record of its proceedings, which record shall be public. It shall, at each monthly meeting, send to the treasurer of such city or town, a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payment and for what granted, which list shall be certified to and signed by the chairman and secretary of such board, attested under oath.

The treasurer of such city or town shall therefore enter a copy of said list upon a book to be kept for that purpose, which shall be known as "The Firemen's Relief and Pension Fund Book," and the said board shall direct payment of the said amounts to the persons named therein. A majority of all the members of said board herein provided for shall constitute a quorum and have power to transact business: Provided, however, no money belonging to said fund shall ever be disbursed for any purpose without a vote of a majority of all the members of the board of trustees, which shall be taken by the yeas and nays, and the vote of each member so voting entered upon the proceedings of the board. [L. '19, p. 669, § 3. Cf. L. '09, p. 89, § 3.]

§ 9562. Monthly Pension on Retirement Due to Age.

Whenever any person, at the taking effect of this act, or thereafter, shall have been duly appointed and has served for a period of twenty years or more, ten years of which shall have been consecutive immediately preceding the end of such period, as a member in any capacity or any rank whatever of the regularly constituted fire department of any such city or town which may be subject to the provisions of this act, the board shall be empowered to order and direct that such person may, after becoming fifty-five years of age, be retired from such fire department, and the board shall retire any member so entitled as hereinabove provided for, upon his written request for same, and such member so retired shall be paid from such fund a monthly pension equal to one-half the amount of salary attached to the rank which he may have held in said fire department for one year next preceding the date of such retirement. Upon the death of any such retired member one-half of the amount of the pension paid during his life, shall be continued and paid to his widow, who was his wife at the time of his retirement, during her life, or until she shall again marry, and if there be no such widow, then to his minor child or children until such child or children shall have arrived at the age of eighteen years, or shall prior thereto have married. Any such widow or child or children of any such retired member at the time of the taking effect of this act, shall come under its provisions. [L. '19, p. 670, § 4. Cf. L. '09, p. 90, § 4.]

§ 9563. Pension on Retirement for Disability.

Whenever any person, when serving as a fireman in any such city or town, shall become physically or mentally disabled while in the performance of, or the result of his duty or duties as defined in this act, said board of trustees may, upon his written request, or without such request if it deems it for the good of said fire department, retire such person from active service, and if so retired, shall order and direct that he shall be paid from such fund a monthly pension equal to one-half the amount of salary attached to the rank which he may have held in such fire department immediately preceding such retirement: Provided, that whenever such disability shall cease such pension shall cease, and such retired person shall be restored to active service in the same rank he may have held at the time of his retirement: Provided, further, upon the death of any member so retired, one-half of the amount of pension allowed and paid to him during such retirement shall be continued and paid to his widow, who was his wife at the time of his retirement, during her life as hereinafter provided, or if there be no such widow, then to his minor child or children, until they shall have reached the age of eighteen years: Provided, however, if such widow or child or children shall marry, then such person so marrying shall thereafter receive no further pension from said fund. [L. '19, p. 671, § 5. Cf. L. '09, p. 90, § 5.]

Nature and circumstances of injury
as affecting right to share in pen-
sion or insurance fund for police-

men and firemen. 20 L. R. A.
(N. S.) 1176,

§ 9564. Proof of Disability.

No person shall be retired under this act, or receive any pension from said fund, except for old age, unless there shall be filed with the board of trustees, certificate of his disability or cause for retirement, which certificate shall be subscribed and sworn to by said person, or members of the board of trustees, and by the firemen's relief and pension fund physician and attending physician if there be one, and the board may require other evidence of disability or cause before ordering such retirement and payment of pension as provided for in this act. [L. '19, p. 672, § 6. Cf. L. '09, p. 90, § 6.]

§ 9565. Sick Benefits.

Whenever any member of the fire department of any city or town shall, on account of temporary physical disability, the result of accident in consequence of the performance of his duty or duties, as defined in this act, be confined to any hospital or to his bed, or unable to perform his duties as such member on account of such temporary disability and shall require nursing and medical care, the board of trustees shall provide a professional nurse and pay all necessary hospital and professional nursing expenses of such member out of the said fund, and the salary of such member shall continue and shall be paid out of said fund while he is necessarily confined to such hospital or bed, or unable to perform his duties as a fireman on account of such temporary disability for a period not exceeding six months, after which period the other provisions of this act shall apply. Such pulmonary diseases as pneumonia and tuber-

culosis when directly traceable to exposure while in active fire duty, shall be considered the same as accident causing physical disability and not under sickness as hereinafter provided for. If, however, the pension fund physicians after an examination shall decide the member will be incapacitated for a period extending beyond six months, then, in that event, the board shall have the power and authority to retire the member after the first month: Provided, further, that in cases of accident as herein defined, disabling the member, he shall receive his full salary for the period of six months, even though such member is sooner retired, after six months, the provisions of section 9563 shall apply. If a member shall become temporarily disabled on account of sickness caused by becoming wet or from exposure, the result of the performance of his duty or duties as herein defined, he shall be entitled to the benefits and be governed by the provisions in case of disability by accident, except he shall receive but one-half of his regular salary: Provided, if the pension fund physicians after an examination shall decide the member will be incapacitated for a period extending beyond six months, then in that event the board of trustees shall have the power and authority to retire such member after the first month in accordance with section 9563. [L. '19, p. 672, § 7. Cf. L. '09, p. 91, § 7.]

§ 9566. Loss of Life—Pension to Whom.

Whenever any member of the fire department of any city or town shall lose his life, or die from the direct result of injuries received while in the performance of his duty or duties as herein defined, leaving a widow, or child or children under the age of eighteen years, then, upon satisfactory proof of such facts made known to the board of trustees, said board shall order and direct that a monthly pension equal to one-half the amount of the salary attached to the rank which such member held in said fire department at the time of his death, shall be paid to his widow during her life, or if there be no widow, then to his minor child or children until they shall have reached the age of eighteen years, or if there be no children then to his parents if it be proven to the satisfaction of the board of trustees that said parents are dependent upon said son for their support: Provided, if such widow, child or children or said parents shall marry, then such person so marrying shall thereafter receive no further pension from said fund. [L. '19, p. 673, § 8. Cf. L. '09, p. 91, § 8.]

Cited in 76 Wash. 511.

The general statutes giving a right of action for wrongful death are not superseded or impliedly repealed, by the fireman's pension act, providing a pension for certain dependents, equal to one-half of the salary of a fireman killed while in the service of the city: *Longfellow v. Seattle*, 76 Wash. 509, 136 Pac. 855.

While the fireman's pension act, providing a pension for certain dependents, equal to one-half of the salary of a fireman killed while in service of the city, is not coextensive with the general statutes giving rights of action for wrongful death, yet in so far as they coincide, the two acts authorize separate and coexist-

ent, but not cumulative recoveries, since it is not the policy of the law to allow two recoveries for one wrong; hence acceptance of a pension, precludes any recovery under the general statutes for wrongful death: *Longfellow v. Seattle*, 76 Wash. 509, 136 Pac. 855.

The act, limiting pensions to dependents of a city fireman killed while in the service of the city to the widow and children under sixteen years of age, does not bar an action for wrongful death, under the general statutes, in behalf of a minor daughter over sixteen years of age; since she is not a participant in the pension fund, and the pension act does not repeal the general act: *Longfellow v. Seattle*, 76 Wash. 509, 136 Pac. 855.

A pension, upon the death of a city fireman, given to the widow during widowhood, equal to one-half of his salary, is not inadequate compensation where the monthly payments equal interest at the statutory rate upon a sum practically three times the sum laid as damages in her complaint for wrongful death, and twice the sum she would recover if she lives out her life expectancy and complies with the terms of the act: *Longfellow v. Seattle*, 76 Wash. 509, 136 Pac. 855.

In authorizing a city to provide for a pension to the dependents of a fireman killed while in the service of the city, the legislature may limit the amount to any sum it sees fit: *Longfellow v. Seattle*, 76 Wash. 509, 136 Pac. 855.

Under Seattle city charter, Article XVI, §32, providing that any person in the

service of the city under civil service who shall be disabled in the discharge of his duties shall receive full pay during such disability not to exceed thirty days and half pay not to exceed six months, the pension provided is a part of the consideration for the services of the employee, and the fact that the employee recovered damages from the person injuring him does not relieve the city from liability for the pension: *Engstrom v. Seattle*, 92 Wash. 568, 159 Pac. 816.

Such an employee is "disabled in the discharge of his duties" and so entitled to the pension where he was in the service of the city and discharging his duties when he was injured by the negligence of some agency other than the agency of the city: *Engstrom v. Seattle*, 92 Wash. 568, 159 Pac. 816.

§ 9567. Death not Arising in Performance of Duties—Payments.

Whenever any member regularly and actively employed in the fire department of any such city or town shall, after one year of service in said fire department die from natural causes, or accident not caused in the performance of his duty or duties as herein defined, and for which no pension is provided for in this act, and who has not been retired for old age or disability prior to his death, then in that event his widow, or children under eighteen years of age, or if there be no widow or children, then his parents if it be proven to the satisfaction of the board of trustees, that said parents are dependent upon said son for their support, shall be entitled to the sum of one thousand dollars (\$1,000) from said fund: Provided, in case of death as above stated before one year of service an amount proportionate to the time of service shall be paid to above mentioned beneficiaries: Provided, if the member at the time of his death had served fifteen years in the fire department, ten years of which have been continuous immediately prior to his death, his beneficiaries herein named shall have the option on request, to receive a monthly pension equal to one-quarter of the amount of salary received by such member at the time of his death until such time as the beneficiaries shall marry or the children become eighteen years of age, when the pension shall cease. [L. '19, p. 674, § 9. Cf. L. '09, p. 91, § 9.]

§ 9568. Examination of Members Temporarily Retired.

All members of the fire department who may be retired for disability under the provisions of this act, except for old age or permanent disability, may be summoned before the board of trustees any time, and shall submit himself thereto for examination, as to his fitness for duty, and shall obey and abide the decisions and orders of such board, and shall report for examination to the firemen's relief and pension fund physician, or some physician designated by the board of trustees, on the first Monday of January, April, July and October of each year. [L. '19, p. 675, § 10. Cf. L. '09, p. 92, § 10.]

§ 9569. Cessation of Pension for Cause—Lieu Allowances.

When any person who shall have received any benefits from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the orders or requirements of said board under this act, then such board of trustees shall order and direct that such pension or allowances that may have been granted to such person shall immediately cease, and such person shall receive no further pension or allowance or benefit under this act, but in lieu thereof the said pension or allowance or benefit may at the discretion of the board be paid to those immediately dependent upon him, or to his legally appointed guardian. [L. '19, p. 675, § 11. Cf. L. '09, p. 92, § 11.]

§ 9570. Resignation or Dismissal.

No person who has resigned or been dismissed from such fire department, or who refuses to comply with the orders of the board of trustees, shall be deemed entitled to any relief or pension from said fund, except in cases where notice of, or claim for disability has been filed with the board before such resignation or dismissal. [L. '19, p. 675, § 12. Cf. L. '09, p. 92, § 12.]

§ 9571. Powers of Board.

The board herein provided for shall, in addition to other powers herein granted, have power, to wit:

First—To compel witnesses to attend and testify before it, upon all matters connected with the operation of this act, and in the same manner as is or may be provided by law for the taking of testimony before notary publics; and its chairman or any member of said board may administer oaths to such witnesses.

Second—To provide for the payment from said fund of all its necessary expenses and printing. No compensation or emoluments shall be paid to any member of said board of trustees for any duties performed under this act, as a trustee: Provided, the board shall have the power and authority to appoint an assistant secretary in any city or town where the secretary is unable owing to his other duties to properly devote his time to the pension fund affairs. It shall be the duty of the assistant secretary to perform all clerical work and such duties as prescribed by the board of trustees, but he shall have no vote unless he be a member of the board of trustees; the board may pay such assistant secretary such salary as they deem just from the fund, and such salary shall be in addition to any salary he may receive from the city or town as regular employee, or any pension allowed to any retired or pensioned member from the pension fund.

Third—To make all needful rules and regulations for its guidance in conformity with the provisions of this act.

Fourth—To appoint one or more regularly licensed practicing physicians of such city or town who shall be known as the firemen's relief and pension fund physicians, who shall examine and report to the board of trustees, upon all applications for relief and pension under this act. They shall visit and examine all sick and temporary disabled members, when, in

their judgment, the best interests of the relief and pension fund require it or when ordered by the board of trustees. They shall perform all operations on sick and injured members and render all medical aid and care necessary for the recovery of the member on account of sickness or temporary disability received while in the performance of his duty or duties as defined in this act. And such appointed physicians shall be paid their fees from said fund, the amount of said fees or salary to be set and agreed upon by the board of trustees and the pension fund physicians. No other physician or surgeon not a regularly appointed pension fund physician shall receive or be entitled to any fees or compensation from said fund as private or attending physician to any sick or injured member of fire department, and should any sick or injured member refuse the services of the pension fund physicians, and engage any other physician or surgeon, he shall be liable for such fees to said physician. No person shall have a right of action against the board of trustees or the pension fund for negligence of any pension fund physician; the board shall have the power and authority to select and employ specialists to assist in consultation or performing any operation on sick or injured members as defined in section 9565 and shall pay his fees from said fund. Said board shall hear and decide all applications for such relief or pensions under this act, and its decisions on such applications shall be final and conclusive and not subject to revision or reversal except by the board. [L. '19, p. 675, § 13. Cf. L. '09, p. 93, § 13.]

Cited in 93 Wash. 469; 110 Wash. 629.

Under the act providing that the board of the fireman's relief fund shall hear and decide all applications for relief or pensions under the act and that its decisions on such applications shall be final and conclusive on the courts, mandamus does

not lie to inquire into the correctness of a ruling of the board or to review its action in denying an application for permanent relief under the act: *State ex rel. Criswell v. Board of Trustees of the Firemen's Relief and Pension Fund*, 93 Wash. 468, 161 Pac. 361.

§ 9572. Pension Fund, How Provided.

Said fund shall consist of all bequests, fees, gifts, emoluments or donations given or paid to the firemen's relief and pension fund, or any of its members, except otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each member of said fire department, including substitutes and temporarily appointed members, amounting to one and one-half per cent of his regular monthly salary as hereinafter provided, and the proceeds of the tax levy as provided for in this act, and the interest or investment of any portion of said fund. [L. '19, p. 677, § 14.]

§ 9573. Tax Levy for Fund—Loans.

The city council or city commissioners of each city or town are hereby authorized and empowered to, and shall, when requested in writing by two-thirds of the members of the board of trustees of the firemen's relief and pension fund, at the same time other levies of taxes are made as provided for by the charter or laws, and in addition to the levy authorized by the charter or laws, levy a tax for an amount estimated to be required by the pension fund board of trustees, not to exceed one-half mill on each dollar of the assessed valuation of the property in such city or town not exempt from taxation, which taxes shall be credited to the firemen's relief

and pension fund. Should the amount in the fund at any time be exhausted by unforeseen circumstances, the board of trustees shall be empowered to obtain a loan from the general fund or any other fund available or budget allowance of such city or town, until the firemen's relief and pension fund can be replenished and the loan returned to the other fund. The board of trustees by a two-thirds vote shall have the power to invest all funds, or any part thereof not required for immediate use, in government, county or city bonds, to be taken in the name of the firemen's relief and pension fund of such city or town and deposited in such bank or banks or vaults together with other securities of such city or town; by the same vote the board shall have power to sell and dispose of any securities. [L. '19, p. 678, § 15. Cf. L. '09, p. 93, § 14.]

§ 9574. Monthly Payments.

Payment provided for in this act shall be made monthly upon proper vouchers and in such manner as provided by the board of trustees in conformity with the procedure in other disbursements of such city or town: Provided, that no warrants shall be drawn upon said fund except by order of the board of trustees which shall be duly entered upon the records of the proceedings of the board. [L. '19, p. 678, § 16. Cf. L. '09, p. 94, § 17.]

§ 9575. Deduction from Members' Salary Warrants.

It shall be the duty of the auditor or city comptroller, or officer whose duty it is to draw warrants in making out warrants for the monthly salaries, to deduct and withhold monthly from the salary of each member of the fire department, including substitutes and temporarily appointed members, one and one-half per cent of such monthly salary during all the time such member may be in the employ of the fire department: Provided, however, the one and one-half per cent shall not be deducted from the allowance of any member of the fire department who has been retired and placed on the pension list on account of old age or disability; and it shall be the duty of the auditor or city comptroller to draw a warrant for the full amount so withheld from the firemen's salaries payable to the city treasurer and by him credited to the firemen's relief and pension fund. [L. '19, p. 679, § 17.]

§ 9576. Allowance for Funeral Expenses.

Upon the death of any active or retired member of the fire department, the board of trustees shall have the power and authority to appropriate from the fund the sum of one hundred dollars (\$100) to assist in defraying the funeral expenses of such member. [L. '19, p. 679, § 18.]

§ 9577. "Performance of Duty" Defined.

The words, "performance of duty and duties" whenever and wherever mentioned in this act, shall be construed to include the performance of any work required in or about company quarters, of any fire station or any other place under the direction or orders of the chief, acting chief, or any officer having the authority to so order such member to perform such work, working at or returning from an alarm of fire, drill or prac-

tice, going to and returning from meals in departments operating under what is known as the continuous or twenty-four hour system, responding to an alarm of fire when off duty in accordance with the rules and regulations of fire departments working under the double platoon or three shifts. Games and sports of any nature for recreation, amusement, exercise or compensation are expressly excluded. Members shall not be entitled to any benefits or pension from said fund, on account of any sickness or injury received while off duty, on vacation, or on leave of absence, except as provided for in section 9567. [L. '19, p. 679, § 19.]

§ 9578. Partial Invalidity.

If any portion of this act should be declared unconstitutional, it shall not thereby affect the constitutionality of the remaining portions. [L. '19, p. 680, § 20.]

CHAPTER XXXVI.

POLICE PENSION FUND.

§ 9579. [8078.] Police Pension Board—Duties.

The mayor, clerk, treasurer, president of the city council of each of the incorporated cities of the first class of the state of Washington, or in case any of said cities has no city council, the commissioner who has supervision of the police department, together with three members of the police department of each of said cities, to be elected as hereafter provided, are, in addition to the duties now required of them, hereby created and constituted a board of trustees, of the relief and pension fund of the police department of each of said incorporated cities, and shall provide for the disbursement of the said relief and pension fund, and shall designate the beneficiaries thereof, as hereafter directed, which said board shall be known as the board of police pension fund commissioners. The police department of each incorporated city of the first class in the state of Washington, shall elect three regularly appointed, qualified and acting members of said department to act as members of said board; said election shall be held every two years, at the times and in the manner in this section provided. Not more than thirty nor less than fifteen days preceding the date fixed by law for the regular election of the mayor of such cities, written notice of the nomination of any member of said department for membership on said board may be filed with the secretary of said board. Each notice of nomination shall be signed by not less than five members of said department, and nothing herein contained shall prevent any member of said department from signing more than one notice of nomination. Said election shall be held on a date to be fixed by the secretary of said board and shall be not less than five days and not more than ten days before the date fixed by law for the election of the mayor as aforesaid. Notice of the dates upon which said notice of nominations may be filed and of the date fixed for the election of said members of said board shall be given by the secretary of said board by posting written notices thereof in a prominent place in the police headquarters of said city. For the purpose of said election, the secretary of said board shall prepare and furnish printed or typewritten ballots in the usual form,

containing the names of all persons regularly nominated for such membership and shall furnish a ballot-box for said election. Each member of said police department shall be entitled to vote at said election for three persons as members of said board. The chief of said department shall appoint two members of said department to act as officials of said election, who shall be allowed their regular wages for said day, but shall receive no additional compensation therefor. Said election shall be held in the police headquarters of said department and the polls shall open at 7:30 A. M., and close at 8:30 P. M. The three nominees receiving the highest number of votes at said election shall be declared elected as members of said board, and their terms shall commence on the same date as that of the term of office of the mayor of said city: Provided not more than thirty days after the taking effect of this act, a special election shall be held to elect members of said board from said department to serve until the expiration of the regular term of the present mayor of each of said cities. The secretary of said board shall fix the time for the filing of notices of nominations, allowing not less than five days for that purpose, and shall fix the date for said special election, which date shall be not less than five days after the expiration of the time fixed for the filing of notices of nominations. Said special election shall in every other respect be governed by the rules in this section provided for the holding of the regular election of members of said board. [L. '11, p. 55, § 1. Cf. L. '09, p. 59, § 1.]

Cited in 73 Wash. 186.

A police pension, being in the nature of accident insurance for which consideration is paid by deduction from the officer's monthly pay, does not reduce the damages which the officer may recover for personal injuries negligently inflicted

upon him: *Heath v. Seattle Taxicab Co.*, 73 Wash. 177, 131 Pac. 843.

Validity of act providing pensions for police. *Ann. Cas.* 1912C, 545; *Ann. Cas.* 1918D, 454; 34 *L. R. A.* (N. S.) 608.

§ 9580. [8079.] Officers—Secretary's Annual Report.

The mayor shall be ex-officio chairman, the clerk shall be ex-officio secretary, and the treasurer shall be ex-officio treasurer of said board. The secretary of said board, at the time of making his annual reports as said city clerk, shall annually report the condition of said fund, the receipts and disbursements on account of the same, together with a complete list of the beneficiaries of said fund, and the amounts paid to each of them. [L. '09, p. 59, § 2.]

§ 9581. [8080.] Creation of Pension Fund.

The said board, for the purpose of said police and relief and pension fund, shall have the power to direct and shall direct the payments annually, and when the annual tax levy of the city or town is made, into said fund of the following moneys:

First. Not more than one per centum of all moneys collected and received from licenses for the keeping of places wherein spirituous, malt or other intoxicating liquors are sold.

Second. Not more than one-half of all moneys received from taxes or from licenses upon dogs.

Third. All moneys received from the sales of all unclaimed property.

Fourth. Not more than ten per centum of all moneys received from licenses from pawnbrokers, second-hand stores, junk-dealers, and from any person, firm or corporation maintaining or conducting billiard, pool or pigeon-hole tables for hire, or billiard and pool rooms.

Fifth. All moneys received from fines for the carrying of concealed weapons.

Sixth. Ten per centum of all fines collected or received in money for violation of city ordinances.

Seventh. The treasurer of any incorporated city which may hereafter be subject to the provisions of this act, shall retain monthly from the pay of each member of the police department of such city, a sum equal to one and one-half per centum of the monthly compensation paid each member for his services as such police officer, said sum to be forthwith paid into said police relief and pension fund, and no other or further deduction shall be made from such pay for any other fund or purpose whatever. [L. '15, p. 137, § 1. Cf. L. '09, p. 60, § 3.]

§ 9582. [8081.] Retirement for Age—Pension.

Whenever any person at the taking effect of this act, or thereafter, shall have been duly appointed or selected and sworn, and shall have served for twenty years or more, in the aggregate, as a member, in any capacity or rank whatever, of the regularly constituted police department of any such city which may hereafter be subject to the provisions of this act, and shall have reached the age of sixty years, or shall have served not less than twenty-five years continuously, and not have reached the age of sixty years, said board may order and direct that such person be retired from further service in such police department, and from the date of the making of such order the service of such person in such police department shall cease, except in cases of emergency as hereinafter provided, and such person so retired shall thereafter, during his lifetime, be paid from such fund a yearly pension equal to one-half of the amount of salary attached to the rank which he held in said police department for the period of one year next preceding the date of such retirement. [L. '15, p. 138, § 2. Cf. L. '09, p. 60, § 4; L. '11, p. 57, § 2.]

§ 9583. [8082.] Disabled in Service—Retirement—Pension.

Whenever any person, while serving as a policeman in any such city shall become physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duties as such policeman, or become incapacitated for service, said incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, said board may, upon his written request filed with the secretary of said board, or without such written request, if it deems it to be for the benefit of the public, retire such person from said department, and order and direct that he shall be paid from said fund during his lifetime, a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held in said police department at the date of such retirement, but on the death of such pensioner his heirs or assigns, shall have no claims against or upon such police relief or pension fund:

Provided, that whenever such disability shall cease, such pension shall cease, and such person shall be restored to active service at the same salary he received at the time of his retirement. [L. '11, p. 58, § 3. Cf. L. '09, p. 61, § 5.]

§ 9584. [8083.] Proof of Disability.

No person shall be retired, as provided in the last preceding section, or receive any benefit from said fund, unless there shall be filed with said board certificate of his disability, which certificate shall be subscribed and sworn to by said person, and by the city physician (if there be one) and two regularly licensed and practicing physicians of such city, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid. [L. '09, p. 61, § 6.]

§ 9585. [8084.] Loss of Life in Service—Pension to Whom.

Whenever any member of the police department of any such city shall lose his life through violence while actually engaged in the performance of his duty as such police officer, leaving a widow or child or children under the age of sixteen years, then upon satisfactory proof of such facts made to it, such board shall order and direct that a yearly pension, equal to one-third of the amount of the salary attached to the rank which such member held in said police department at the time of his death, shall be paid to such widow during her life, or if no widow, then to the child or children, until they shall be sixteen years of age: Provided, that if such widow or child or children, shall marry, then such person so marrying shall thereafter receive no further pension from such fund: Provided, further, that if any member, so losing his life, leaves no wife, or child or children, under the age of sixteen years, then the said board shall pay the sum of not more than one hundred fifty dollars toward the funeral expenses of such member. [L. '15, p. 139, § 3. Cf. L. '09, p. 62, § 7.]

§ 9586. [8085.] Death from Natural Causes—Benefit to Whom.

Whenever any member of the police department of such city shall, after five years of service in said department, die from natural causes, then his widow, or child, or children under the age of sixteen years, or if there be no widow or children, then his parents or unmarried sisters, minor brother or brothers, dependent upon him for support, shall be entitled to the sum of one thousand dollars from such fund. This section to apply to members who shall have been retired, for any reason, from active service under the provisions of this act. [L. '15, p. 140, § 4. Cf. L. '09, p. 62, § 8; L. '11, p. 58, § 4.]

§ 9587. [8086.] Physical Examination for Retired—Emergency Duty.

Any person retired for disability under this chapter may be summoned before the board herein provided for, at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of said board with reference thereto; and all members of such police force who may be retired under the pro-

visions of this act, shall report to the chief of police of such city where so retired on the first Mondays of April, July, October and January of each year; and in cases of emergency, may be assigned to and shall perform such duty as said chief of police may direct, and such person shall have no claim against such city for payment for such duty so performed. [L. '09, p. 62, § 9.]

§ 9588. [8087.] Withdrawal of Pension, Causes for.

Whenever any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall become a nonresident of this state, or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board under this act, in respect to said examination or duty, then such board shall order that such pension as may have been granted to such person shall immediately cease, and such person shall receive no further pension allowance or benefit under this chapter. [L. '09, p. 63, § 10.]

§ 9589. [8088.] Board—Meetings, Duties, Disbursement of Fund.

The board herein provided for shall hold monthly meetings on the first Mondays of each month and upon the call of its president. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto for the amounts of money ordered paid to such persons from such fund by said board, which warrants shall state for what purpose such payments are made; it shall keep a record of its proceedings, which record shall be a public record; it shall, at each monthly meeting, send to the treasurer of such city a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The treasurer of such city shall thereupon enter a copy of said list upon a book to be kept for that purpose and which shall be known as "The Police Relief and Pension Fund Book," and the said board shall direct payment of the amounts named therein to the persons entitled thereto, out of such fund. A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business. [L. '11, p. 58, § 5. Cf. L. '09, p. 63, § 11.]

§ 9590. [8089.] Powers of Board—Witnesses—Expenses—No Salary.

The board herein provided for shall, in addition to other powers herein granted, have power: First: To compel witnesses to attend and testify before it and upon all matters connected with the operation of this chapter, in the same manner as is or may be provided by law for the taking of testimony in courts of record in this state, and its president or any member of said board may administer oaths to such witnesses. Second: to provide for the payment from such fund of all necessary expenses and printing: Provided, that no compensation or emolument shall be paid to any member of said board for any duty required or performed under this chapter. Third: to make all needful rules and regulations

for its guidance in conformity with the provisions of this chapter. [L. '09, p. 63, § 12.]

§ 9591. [8090.] Sick Benefits.

Whenever any member of the police department of any such city shall on account of sickness or disability, suffered or sustained while a member of said department, and not caused or brought on by dissipation or abuse, of which the board shall be the judge, be confined to any hospital or to his home and shall require nursing, care or attention, the said board shall pay the necessary hospital, care and nursing expenses of such member out of said fund, and the salary of said member shall continue while he is necessarily confined to such hospital or home and necessarily requires care and nursing on account of such sickness or disability for a period not exceeding six months, after which said period the other provisions of this act shall apply: Provided, that said board shall in all cases have the right in its discretion to have said member so suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the board, for the purpose of ascertaining the nature and extent of such sickness or disability, said physician or physicians to report to said board the result of said examination within three days thereafter. Any such member who refuses to submit to such examination or examinations shall forfeit all his rights to benefits under this section. [L. '15, p. 140, § 5. Cf. L. '09, p. 64, § 13; L. '11, p. 59, § 6.]

§ 9592. [8091.] Payments Quarterly—Surplus to General Fund.

Payments provided for in this act shall be made monthly upon proper vouchers. If at any time there is more money in the fund provided for in this act than is necessary for the purposes of this act, then such surplus shall be transferred from such fund to the general fund of the city: Provided, that at all times enough money shall be kept in said fund to meet all payments provided for in this act. [L. '11, p. 59, § 7. Cf. L. '09, p. 64, § 14.]

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CHAPTER I.

WATERWAYS ACROSS TIDE LANDS.

Commercial waterways: See *infra*, § 9724.

§ 9593. [8092.] Establishment of Ways Across Tide Flats Near Cities.

There shall be established one or more public ways across all of the tide flats that are situated within or in front of any incorporated city or town, or within two miles either way from any incorporated city or town, within the state of Washington. [L. '90, p. 731, § 1; 1 H. C., § 2128.]

Cited in 91 Wash. 455, 456.

§ 9594. [8093.] Dimensions of Ways—Commencement and Extension of.

The public ways provided for in the last preceding section shall not be less than fifty nor more than one thousand feet wide, and shall commence at the outer or deep water end, in not less than twenty feet of water at low tide, and shall extend inland across the state's tide lands. [L. '90, p. 731, § 2; 1 H. C., § 2129.]

§ 9595. [8094.] Location of Way.

The public ways above provided for shall be so located as to include, as near as is practicable, within their bounds all navigable streams running through the tide flats in which they are located, and at such other places as may be necessary for the present or future convenience of commerce. [L. '90, p. 731, § 3; 1 H. C., § 2130.]

§ 9596. [8095.*] Plats to be Filed Where.

A correct plat of all public ways so established shall be made, one copy of which shall be filed with the commissioner of public lands of the state and one copy shall be kept in the office of the chairman of the board of harbor line commissioners, and each county shall be furnished

with a correct plat of all such public ways established within its borders, and such plats shall be filed as city or town plats are filed and become a part of the county records. [L. '17, p. 605, § 8. Cf. L. '93, p. 26, § 1.]

"Harbor line commissioners," now state board of land commissioners: See § 7797, *supra*.

§ 9597. [8096.] Ways to be Reserved for Public Use.

All the public ways that may be established under the provisions of this chapter are, and shall forever be, reserved from sale or lease as public ways for water crafts. [L. '90, p. 732, § 5; 1 H. C., § 2132.]

§ 9598. [8097.] "Tide Flats," "Tide Lands" and "Ordinary Water Crafts" Construed.

Where the words "tide flats or tide lands" are used in this chapter, they shall be construed to mean all lands over which the tide ebbs and flows, and which is bare at low tide; and where the words "ordinary water crafts" are used, they shall be construed to mean boats, barges, and other water crafts drawing two and one-half feet and over of water. [L. '90, p. 732, § 6; 1 H. C., § 2133.]

§ 9599. [8098.] Duty of State Board of Land Commissioners.

The board of harbor line commissioners are hereby authorized and instructed to carry out the provisions of this chapter, and they shall begin operations as soon as practicable after the passage and approval of this act; and they are hereby authorized to employ such assistance and procure such material as may be necessary to carry out the full intent and purpose of this chapter, and the compensation for the same shall be such reasonable amount as said commissioners may deem advisable. [L. '90, p. 732, § 7; 1 H. C., § 2134.]

"Harbor line commissioners": See note to § 9596, *supra*.

§ 9600. [8099.] Payment of Bills.

All bills incurred in carrying out the provisions of this chapter shall be audited and paid in the same manner as is provided in the chapter creating the harbor line commissioners, for the payment of bills incurred by them. [L. '90, p. 732, § 8; 1 H. C., § 2135.]

§ 9601. Plat of Lake Washington Second Class Shore Lands.

As soon as practicable after the taking effect of this act it shall be the duty of the commissioner of public lands to plat for the public use harbor area in front of such portions of the shore lands of Lake Washington heretofore sold as second class shore lands by the state of Washington as in the opinion of said commissioner are necessary for the use of the public as harbor area: Provided, however, that this act shall not be construed to authorize said commissioner to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area heretofore platted under and by virtue of chapter 183 of the Session Laws of 1913; and the title to all shore lands heretofore purchased from the state as second class shore lands is hereby confirmed

to such purchaser, his heirs and assigns, out to the inner harbor line heretofore established and platted under chapter 183 of the Session Laws of 1913 or which shall be established and platted under this act, and all reservations shown upon the plat made and filed pursuant to chapter 183 of the Session Laws of 1913, are declared null and void, except reservations shown thereon for harbor area and reservations in such harbor area and reservations across shore lands for traversed streets which were extensions of streets existing across shore lands at the time of filing of such plat. Said land commissioner shall in platting said harbor area make a new plat showing all the harbor area on Lake Washington already platted under said chapter 183 of the Session Laws of 1913 and under this act; and upon the adoption of said new plat by the said board of land commissioners acting as a harbor commission and the filing of said plat in the office of the commissioner of public lands, the title to all said harbor area so selected shall remain in the state of Washington, and such harbor area shall not be sold, but may be leased, as provided by law relating to the leasing of such harbor area. [L. '17, p. 612, § 1.]

§ 9602. Plat of All Unsold Shore Lands — Reservations — Acceptance by City.

Immediately after establishing the harbor area provided for herein, it shall be the duty of the commissioner of public lands to make a plat designating thereon all shore lands, of the first and second class, not theretofore sold by the state of Washington, and to select for the use of the public out of such shore lands, or out of harbor areas in front thereof, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways and other purposes, in so far as such shore lands may be available for any or all such purposes, and upon the filing of such plat of shore lands with such reservations and selections thereon, in the office of the commissioner of public lands, the title to all selections for streets, avenues and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which situate. The title to and control of any lands so selected and designated upon such plat for parkway and boulevard purposes shall, if the same lie outside of the corporate limits of any city or town, and if the same form a part of the general parkway and boulevard system of a city of the first class, be in such city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway in which situate, or for which selected, and the title to all selections for slips, docks, wharves, warehouses and other purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situated, and any sales of such shore lands hereafter shall be made subject to such selection and reservation for public use. In case of any reservations made as hereinbefore provided for the city of Seattle or the port of Seattle out of first class shore lands platted prior to the first of March, 1917, the city council or the port commission shall within sixty (60) days after the filing of the plat by the land commissioner showing such reservations file an acceptance thereof with the land commissioner and within two (2) years after the filing of such acceptance pay to the state of Washington the appraised value of such shore

lands of the first class so reserved and accepted for the benefit of the Alaska-Yukon-Pacific Exposition, and shore land improvement fund, and in default of making such payment within such time said reservations shall be null and void and such reservations shall be subject to sale in the same manner as if they had not been made: Provided, however, that in case all outstanding warrants issued against the Alaska-Yukon-Pacific Exposition and shore lands improvement funds are paid in full prior to the expiration of the two (2) year period provided for above, then any reservation of the first and second class shore lands made for the city of Seattle or the port of Seattle and accepted and not paid for shall vest in municipality for which the reservation was made without said municipality being required to pay to the state of Washington the appraised valuation thereof. [L. '17, p. 613, § 2.]

CHAPTER II.

EXCAVATION OF WATERWAYS, AND FILLING IN TIDE LANDS BY PRIVATE CONTRACT.

§ 9603. [8100.] Contract for.

The commissioner of public lands of the state of Washington may, when in his judgment the interests of commerce would be subserved thereby, enter into contract with any person or persons, or incorporated companies doing business in the state of Washington, for the excavation of any waterway or waterways through any lands belonging to the state of Washington, or to any citizen or corporation of said state, and for the filling in and raising above high tide of any tide or shore lands belonging to the state of Washington, and upon the completion of such contract such person or persons or incorporated company shall become entitled to and shall have a lien, as in this chapter provided, upon all tide and shore lands belonging to the state of Washington, adjacent to such waterway, and remaining unsold at the date of the approval of this act, that they may fill in and raise above high tide, and all purchasers of said tide and shore lands from the state of Washington shall take the same subject to said lien: Provided, however, that such contract shall not become binding or operative until approved by the governor, nor until such person or persons or incorporated company shall have filed with the commissioner of public lands, a bond in the penal sum of not less than twenty-five hundred, nor more than twenty-five thousand dollars, as in the judgment of said commissioner of public lands shall be considered necessary in a particular case, with sureties to be approved by said commissioner of public lands, said bond to be conditioned for the faithful performance of said contract: Provided further, that no lands shall be affected thereby except lands within or in front of incorporated cities or towns, or within one mile thereof on either side, or lands between any inner and outer harbor lines established by proper authority. [L. '93, p. 241, § 1.]

Cited in 8 Wash. 702, 708; 11 Wash. 231, 641, 645; 20 Wash. 276, 279; 23 Wash. 732; 35 Wash. 507—509, 511; 36 Wash. 139; 70 Wash. 556, 558; 86 Wash. 657.

Remington's Digest, Nav. Wat., §§ 1—9, and cases cited.

See, also, Meandered Slough—Special or General Use: Hewitt-Lea Lbr. Co. v. King County, 113 Wash. 431, 194 Pac. 377.

Navigability of Waters in General: See

The title to this act is broad enough to include a provision for liens for the work performed, as that is merely incidental to the main subject and a means of accomplishing the main purpose, and the act is not invalid as embracing more than one subject: *Seattle & Lake Washington Waterway Co. v. Seattle Dock Co.*, 35 Wash. 503, 77 Pac. 845.

Right to Establish and Maintain: See *Remington's Digest*, Canals, § 1; *Hays v. Hill*, 23 Wash. 730, 63 Pac. 576; *State ex rel. Bussell v. Callvert*, 33 Wash. 380, 74 Pac. 573.

Contracts With State for Construction: See *Remington's Digest*, Canals, § 2; *Scholpp v. Forrest*, 11 Wash. 640, 40 Pac. 133; *Mississippi Valley Trust Co. v.*

Hofius, 20 Wash. 272, 55 Pac. 54; *Hays v. Hill*, 23 Wash. 730, 63 Pac. 576.

Establishment by State or Federal Government: See *Remington's Digest*, Canals, § 2-1; *State ex rel. Burke v. Board of Commrs.*, 58 Wash. 511, 109 Pac. 350; *Bilger v. State*, 63 Wash. 457, 116 Pac. 19.

Liens and Other Interests in Land: See *Remington's Digest*, Canals, § 3; *Hays v. Hill*, 23 Wash. 730, 63 Pac. 576; *Mississippi Valley Trust Co. v. Hofius*, 20 Wash. 272, 55 Pac. 54; *Seattle & Lake Wash. Waterway Co. v. Seattle Dock Co.*, 35 Wash. 503, 77 Pac. 845; *Hays v. Callvert*, 36 Wash. 138, 78 Pac. 793; *Bussell v. Ross*, 60 Wash. 344, 111 Pac. 165.

§ 9604. [8101.] Contract to Specify, What.

Said contract with the commissioner of public lands shall specify the waterway or waterways proposed to be excavated, and the lands to be affected thereby, and shall be accompanied by a map of the locality or localities showing said waterway or waterways, and their relation to the harbor lines and reservations in front of the cities or towns where the same are located, and shall show the tide and shore lands to be filled in and raised above high tide, properly designated and subdivided as nearly in accordance with the existing subdivisions of abutting uplands as the proper location of said waterway or waterways will permit and shall specify and exhibit the waterway or waterways proposed to be excavated as to their depth and width and extent: Provided, that when harbor lines and waterways have been established by the harbor line commission of the state, no other waterways shall be excavated except the waterways exhibited on the final maps of said harbor line commission, except with the consent and approval of such harbor line commission; and where no harbor lines and waterways have been so established then the plan mentioned in said contract must, before being adopted by said commission, be submitted to and approved by the harbor line commission: And provided further, that if no harbor line commission be in existence, then the commissioner of public lands shall establish waterways which may be excavated as herein provided. [L. '93, p. 242, § 2.]

"Harbor line commission": See note to § 9596.

Cited in 11 Wash. 231, 646.

§ 9605. [8102.] Time of, Commissioner may Extend.

Said contract shall specify the time of beginning work on said waterway or waterways, and the time when such work shall be completed: Provided, that the time set for the beginning of said work shall be within six months of the signing of said contract, and the time set for the completion of said work shall be a reasonable time, to be determined in each case by the commissioner of public lands, according to the difficulties to be encountered: And provided further, that said commissioner of public lands, upon showing of due diligence on the part of the contracting

parties may grant an extension of the time for the beginning or completion of said work. [L. '93, p. 242, § 3.]

Cited in 20 Wash. 279.

§ 9606. [8103.] Commissioner's Certificate of Cost.

Upon the completion of the work, provided for by said contract, or any part thereof, capable of separate use for the purposes of navigation, according to the terms and conditions of said contract, and within the time provided therein, or such further extension of time as may have been granted by virtue of the preceding section, the commissioner of public lands shall issue his certificate to the contracting parties, or their assigns, showing the actual cost of the filling in and raising above high tide of all tide and shore lands so filled in and raised above high tide by such completion of said work, or such separate portion thereof, and specifying and describing, with reasonable certainty, the lands so filled in and raised above high tide. Upon the filing in the office of the county auditor of the county or counties in which such lands are situated, of such certificate of the commissioner of public lands, said contracting parties shall acquire a lien, and the same shall thereupon attach, for the amount specified in such certificate, with fifteen per cent additional thereon, and with interest on such amount and additional percentage from the date of such certificate at the rate of eight per cent per annum until payment: Provided, however, that such lien shall not be operative for an amount exceeding the cost of the work as stated in the contract, or, as the case may be, such portion of said stated cost as shall be proportionate to the part of the work with reference to which the certificate has issued, upon the bonds specified in such certificate. Such lien shall not be in solido, and upon the sale by the state to any person, or by any owner claiming under the state to any other person, of any of the tide and shore lands specified in such certificate, the lien herein granted may be discharged, as hereinbelow provided, as to any such part of said lands separately granted or owned, upon the payment of such part of the amount for which the lien upon the lands was given in the first instance as shall bear the same proportion to said whole amount which the area of such separate part of such land bears to the area of the whole thereof. The amount due on such lien, or any proportionate part thereof separately payable as above provided, shall be payable by any owner of said lands, or any part thereof separately owned, as the case may be, other than the state, in ten equal annual installments, the first installment at the end of the first year after the sale of such lands, or of such separate portion thereof, by the state; and the remaining installments, one at the end of each year thereafter, with accompanying interest on each of such installments, as hereinbefore provided, to the time of the payment thereof, and such lien may be foreclosed in the manner provided by law for the foreclosure of other liens on real estate for nonpayment of the whole amount due, or of any separate installment or installments thereof which shall have become due. If such lands specified in any such certificate shall not be sold by the state, within one year after the date of such certificate, the parties in whose favor such certificate was issued, or their assigns, shall have the option during the next succeeding six months to purchase such lands, or any part there-

of, from the state in the manner provided by then existing laws for the sale of tide lands of the state. This chapter shall not be so construed as to create any obligation on the part of the state to pay or discharge any lien which may attach to such lands by virtue of the provisions thereof. [L. '93, p. 243, § 4.]

Cited in 11 Wash. 642; 20 Wash. 277; 60 Wash. 350, 354; 70 Wash. 560.

Reclamation and Improvement: See Remington's Digest, Nav. Wat., § 29; Bus-

sell v. Ross, 64 Wash. 418, 116 Pac. 1088; Richards v. Bussell, 70 Wash. 554, 127 Pac. 198, 129 Pac. 90.

Liens, see notes to § 9603, supra.

§ 9607. [8104.] Application for Contracts.

Any person or persons, or any corporation, doing business in this state may give notice in writing to the commissioner of public lands of his or their intentions to comply with the provisions of this chapter at any given locality or localities, describing the same in general terms, and thereafter they shall have ninety days after the completion of the publication hereinafter mentioned within which to prepare the maps, specifications and contracts herein provided for. And the giving of said notice shall place the lands described therein subject to the operation of this chapter until the making and signing of the contracts herein provided for, and the making and signing of said contract shall make the lands described therein subject to the operating of this chapter pending its execution, and all persons or corporations purchasing said lands from the state in the meantime shall take the same subject to the ultimate lien upon the same, provided for herein: Provided, however, that this section shall not be so construed as to require the commissioner of public lands to enter into any contract whatever, or the governor to approve any contract whatever; and said commissioner of public lands shall have the right to refuse to make any contract, and the governor shall have the right to refuse to approve any such contract which in their judgment or in the judgment of either of them would be detrimental to the interests of the state: And provided further, that the commissioner of public lands shall publish for thirty days, at the expense of the applicant, in some newspaper of general circulation, in the county where the said lands are situated, notice of the pendency of such application, and request all interested parties to appear before him at the time and place mentioned in said notice and state their objections; and no contract shall be entered into by the commissioner of public lands for the improvement of any such waterway or waterways until after the date fixed in said notice at which interested parties may appear and be heard. [L. '93, p. 244, § 5.]

Cited in 60 Wash. 350.

§ 9608. [8105.] Right of Way Through Public Lands.

A right of way is hereby granted for any waterway or waterways herein provided for through any lands belonging to the state of Washington of sufficient width to accommodate said waterway or waterways; the width and definite location of such right of way, however, shall be plainly and completely specified in the contract herein provided for. [L. '93, p. 245, § 6.]

§ 9609. [8106.] Bulkheads, etc.

All contracts provided for herein shall specify the character of all bulkheads and other restraining works and be accompanied by drawings and specifications of the same, and the commissioner of public lands shall be the judge of the sufficiency thereof, and of the minimum depth to which any waterway shall be excavated, in order to make the same useful for the purposes of commerce and navigation. [L. '93, p. 245, § 7.]

Cited in 60 Wash. 350.

§ 9610. [8107.] Apportionment of Cost.

In ascertaining the cost of filling in and raising above high tide of any tide or shore lands, the cost of all bulkheads, and other restraining works, and the cost of filling in and raising above high tide of all streets, alleys and public squares or places, shall be apportioned to the lands benefited thereby, in addition to the cost of filling in such lands. [L. '93, p. 245, § 8.]

Cited in 60 Wash. 350, 353; 64 Wash. 420; 70 Wash. 560. See notes to § 9603.

§ 9611. [8108.] Waterways Open to Public—Tolls.

All waterways excavated through any tide or shore lands belonging to the state of Washington by virtue of the provisions of this chapter, so far as they run through said tide or shore lands, are hereby declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as provided by law: Provided, that where tide gates or locks are considered, by the contracting parties excavating any waterways, to be necessary to the efficiency of the same, the commissioner of public lands may, in his discretion, authorize such tide gates or locks to be constructed and may authorize the parties constructing the same to operate them and collect a reasonable toll from vessels passing through said tide gates or locks: Provided further, that the state of Washington or the United States of America can, at any time, appropriate said tide gates or locks upon payment to the parties erecting them, of the reasonable value of the same at the date of such appropriation, said reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use. [L. '93, p. 246, § 9.]

Cited in 11 Wash. 231, 646.

§ 9612. [8109.] Appraisement of Tide Lands Proposed to Fill.

If the commissioner of public lands shall determine to let any contract for the excavation of a waterway, as hereinbefore provided, the tide land appraisers appointed in the county in which said tide lands lie, shall forthwith appraise the tide lands which it is proposed to fill in by the excavation of such waterway, at their actual value at the time of letting such contract, and the said lands so appraised shall never be disposed of by the state for less than such appraised value. [L. '93, p. 246, § 10.]

Cited in 36 Wash. 141; 70 Wash. 556.

CHAPTER III.
ERECTION OF WHARVES.

§ 9613. [8110.] Riparian Owner may Build Wharf and Charge Wharfage.

Any person owning land adjoining any navigable waters or watercourse, within or bordering upon this state, may erect upon his own land any wharf or wharves, and may extend them so far into said waters or watercourses as the convenience of shipping may require; and he may charge for wharfage such rates as shall be reasonable: Provided, that he shall at all times leave sufficient room in the channel for the ordinary purposes of navigation. [L. '54, p. 357, § 1; L. '60, p. 326, § 1; L. '63, p. 531, § 1; Cd. '81, § 3271; 1 H. C., § 2136.]

See supra, § 7999, lease of harbor areas for wharves.

See supra, § 8006 et seq., establishment of harbor lines.

See supra, § 9593, public ways to harbors.

Cited in 2 Wash. 257, 258, 260—262, 284, 399, 400; 15 Wash. 173; 16 Wash. 543; 43 Wash. 114.

Right to Build and Maintain: See Remington's Digest, Nav. Wat., § 34; Eisenbach v. Hatfield, 2 Wash. 236, 26 Pac. 539, 12 L. R. A. 632.

See, also: Remington's Digest, Wharves, § 1; State ex rel. Port Angeles v. Morse, 56 Wash. 654, 106 Pac. 147.

This section cannot be construed to mean that a private wharf may not be devoted to such use as will, in contemplation of law, make it partake of the nature of a public wharf: Barrington v.

Commercial Dock Co., 15 Wash. 170, 45 Pac. 748, 33 L. R. A. 116.

A county's use of a wharf for a ferry, when not such as to make the same a public dock: Anderson Steamboat Co. v. King County, 84 Wash. 375, 146 Pac. 855.

Riparian owner's right to construct wharf under right of access. 11 Ann. Cas. 11.

Right to erect and maintain wharves. 40 L. R. A. 635.

Effect of construction by abutting owner of wharf on street. 16 L. R. A. (N. S.) 506.

§ 9614. [8111.] County Commissioners may Authorize Wharf and Prescribe Rates.

(1) Whenever any person shall be desirous of erecting any wharf at the terminus of any public highway, or at any accustomed landing place, he may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and to be kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage and charges thereon, but there shall be no charge for the landing of passengers or their baggage. (2) No such authority shall be granted to any person other than the owner of the land where the wharf is proposed to be erected, unless such owner shall neglect to apply for such authority; and whenever application shall be made for such authority by any person other than such owner, the board of county commissioners shall not grant the same unless proof shall be made that the applicant caused notice in writing of his intention to make such application, to be given by posting up at least three notices in public places in the neighborhood where the proposed wharf is to be erected and one notice at the county courthouse, twenty days prior to any regular session of the board of county commissioners at which application shall be made and by serving a copy of said notice in writing upon such owner of the land, if re-

siding in the county, at least ten days before the session of the board of county commissioners at which the application is made. (3) When such application is heard, if the owner of such land applies for such authority and files his undertaking with one or more sureties to be approved by the county commissioners in a sum not less than one hundred dollars nor more than five hundred dollars, to be fixed by the county commissioners, conditioned that such person will erect said wharf within the time therein limited, to be fixed by the county commissioners, and maintain the same and keep said wharf according to law; and if default shall at any time be made in the condition of such undertaking damages not exceeding the penalty may be recovered by any person aggrieved before any court having competent jurisdiction, then said county commissioners shall authorize such owner of the land to erect and keep such wharf. (4) If such owner of the land does not apply as aforesaid the commission may authorize the same to be erected and kept by such applicant upon his entering into an undertaking as required of such owner of the land. [L. '54, p. 37, § 1; L. '63, p. 531, § 2; Cd. '81, § 3272; 1 H. C., § 2137; L. '93, p. 77, § 1.]

§ 9615. [8112.] Towns may Authorize Wharf—Liability.

Whenever any person or persons shall be desirous of erecting a wharf at the terminus of any street of any incorporated town or city in the state, he or they may apply to the municipal authorities of such town or city, who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept in repair for any length of time not exceeding ten years; and every person building, owning, or occupying a wharf in this state, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of such wharf; and every such person shall post or cause to be posted in a conspicuous place on said wharf the established rates of wharfage, noting passengers and their baggage free. [L. '55, p. 37, § 1; L. '63, p. 531, § 3; Cd. '81, § 3273; 1 H. C., § 2138.]

See *supra*, §§ 8966, 9034, powers of cities.

Cited in 46 Wash. 672; 56 Wash. 659, 660.

The act of the territorial legislature of 1854, authorizing riparian owners to build wharves in front of their premises, was but a license and, until availed of, was revocable; and the Constitution and subsequent laws have abrogated the act: *Eisenbach v. Hatfield*, 2 Wash. 236, 26 Pac. 539, 12 L. R. A. 632.

This section providing that cities may authorize the construction of a wharf at the terminus of a street, has been super-

seded by Constitution, Article XV, and the laws enacted in pursuance thereof for the sale, lease or control of tide lands and harbor areas by agents of the state, so far as the same affects tide lands not owned by the city or included in public streets extended over the tide lands: *State ex rel. Port Angeles v. Morse*, 56 Wash. 654, 106 Pac. 147.

Right of municipality to erect wharf at point where street abuts upon waterfront. 14 Ann. Cas. 1135.

§ 9616. [8113.] Wharves Without Railings Deemed Incomplete.

All wharves now standing, or hereafter to be built, in this state, shall be deemed insufficient, incomplete, and unfinished unless they have good and substantial banisters or railing on the sides thereof, or a strip of hewn timber at least eight by ten inches square, well secured all round said

wharves within ten inches of the outer edge thereof, except at the ends. [L. '60, p. 327, § 2; L. '63, p. 532, § 4; Cd. '81, § 3274; 1 H. C., § 2139.]

§ 9617. [8114.*] County Commissioners may Build and Maintain Wharves.

The board of county commissioners of each county in this state is hereby authorized to build and maintain, when in their judgment the convenience of the public so requires, and subject to the approval of the board of state land commissioners, wharves and landings on and across the tide or shore lands owned by the state of Washington of any navigable waters or watercourses within or bordering upon their respective counties and not in front of or included within the limits of any incorporated city or town; said wharves or landings to begin at the point of termination of a county road at or near the shore of such navigable waters or watercourses, and to extend so far into said waters or watercourses as the convenience of shipping may require. [L. '17, p. 605, § 9; L. '03, p. 20, § 1.]

Cited in 68 Wash. 633, 663, 664; 80 Wash. 200; 84 Wash. 378; 104 Wash. 491.

Rights in County Wharves: See Remington's Digest, Wharves, § 4; Anderson Steamboat Co. v. King County, 84 Wash. 375, 146 Pac. 855.

Negligence of County: See Gregg v. King County, 80 Wash. 196, 141 Pac. 340.

The maintenance of a wharf as an approach to a county ferry is not ultra vires: Hart v. King County, 104 Wash. 485, 117 Pac. 314.

Under the rule that counties have only such powers as are conferred by statute,

and that statutes of eminent domain, being in derogation of common right, are to be strictly construed, a county has no power to condemn lands within a city of the first class for a public wharf or dock, not connected with a county road; since a wharf is in no sense a county road; this section limiting the right of eminent domain to wharf sites at the terminus of county roads and not within the limits of first-class tide lands: State ex rel. Wauconda Investment Co. v. Superior Court, 68 Wash. 660, 124 Pac. 127, Ann. Cas. 1913E, 1076.

§ 9618. [8115.*] State Board may Grant Easement—Procedure.

In cases where the board of county commissioners shall determine to build, construct and maintain wharves or landings as aforesaid over and across tide or shore lands owned by the state of Washington, the board of state land commissioners are hereby authorized to grant an easement to the county for so much of said tide or shore land as may be necessary for right of way purposes: Provided, that a duly attested and sworn copy of the plat made by the county surveyor shall first be filed with the board of state land commissioners, together with a petition of the board of county commissioners setting forth the reasons for the same; and the aforesaid plat, when approved by the board of state land commissioners, shall be and form the official plat of said right of way and shall be filed in the office of the commissioner of public lands and the said plat shall show the amount of land embraced in the proposed right of way and the location of the same relative to at least two of the corners of the public land survey. [L. '17, p. 605, § 10; L. '03, p. 20, § 2.]

§ 9619. [8116.] Right of Way Over Private Property by Eminent Domain.

In cases where a person or person [persons], firm or corporation has acquired a right, title or interest in and to the tide lands or other

lands over which it is proposed to build, construct or maintain such wharf or landing, whether such interest be a title in fee simple or as lessee or under contract of purchase or otherwise, and the board of county commissioners shall be unable to agree with the person, persons, firm or corporation claiming such interest or title as to the compensation to be paid for the taking of such strip of tide lands or other lands, then and in that case such board of county commissioners may by an order direct proceedings to procure a right of way over said tide lands or other lands to be brought in the superior court by the county attorney in the manner provided by law, for the taking of private property for public use, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided by the laws of this state for the appropriation of lands and other property by counties for public use. [L. '03, p. 21, § 3.]

Taking of land for a wharf as a public purpose supporting eminent domain. 22
L. B. A. (N. S.) 135.

CHAPTER IV.

VACATION OF WATERWAYS.

§ 9620. [8117.] Procedure to Obtain.

Whenever any waterway heretofore established under the authority of the laws of this state, or any portion of such waterway, shall not have been excavated, or shall not be in use for the purposes of navigation, or shall no longer be required in the public interest to exist as a waterway, such waterway or portion thereof may be vacated by written order of the commissioner of public lands of the state of Washington whenever he shall be requested so to do by ordinance or resolution of the city council of the city in which such waterway is situate, in whole or in part, or, in case such waterway is situate, in whole or in part, in a port district organized under the laws of the state of Washington, whenever he shall be requested so to do by a resolution of the port commission of such port district; and upon the making of such order the waterway or portion thereof shall thereupon be deemed to be and shall be thereby vacated: Provided, however, that if the waterway or portion thereof so vacated be navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of such resolution or ordinance, together with a copy of said order of the commissioner of public lands certified to by him, shall be submitted to the secretary of war and chief of engineers of the United States for their approval, and if they approve the same such waterway or portion thereof shall be thereupon deemed to be and shall be thereupon vacated. [L. '13, p. 590, § 1. Cf. L. '09, p. 114, § 1.]

§ 9621. [8118.] City may Extend Street Across Vacated Portion.

Upon such vacation occurring, in either of the manners aforesaid, the city within, in front of, or in the vicinity of which such waterway is located, shall have the right to extend across the portions so vacated any existing streets, or to select therefrom such portions thereof as the city may desire for street purposes, in no case to exceed one hundred and fifty feet in width for any one street. Such selection shall be made within

sixty days subsequent to the receipt of notice from any party in interest of the vacation of the portion of the waterway so vacated. [L. '09, p. 115, § 2.]

§ 9622. [8119.] Disposal of Vacated Portion.

Should such city fail to make such selection within such time, or having within such time made such selection, the title of the remaining portions of such waterway so vacated shall vest in the state of Washington, unless the same be situate within the territorial limits of a port district created under the laws of the state of Washington, in which event such title shall vest in said port district. If subsequent to such vacation, the vacated waterway or portion of waterway shall be embraced within the limits of a port district created under the laws of the state of Washington, the title to such portions thereof as shall then remain undisposed of by the state shall vest in such port district. Such title so vesting shall be subject to any railroad or street railway crossings existing at the time of such vacation. [L. '13, p. 591, § 2. Cf. L. '09, p. 115, § 3.]

§ 9623. [8119-1.] Preference Rights Annulled.

All preference rights of purchase created by the act of which this act is amendatory are hereby annulled. [L. '13, p. 591, § 3.]

§ 9624. [8119-2.] Application of Act.

The provisions of this act shall not apply to any waterway or portion of waterway which forms, or by improving same may be made to form, a connection between a river or another waterway and any tidal water. [L. '13, p. 591, § 4.]

CHAPTER V.

RIVER IMPROVEMENTS.

See, also, the next chapter.

§ 9625. [8120.] Tax Levy for River Improvement Fund.

The county commissioners of any county may annually levy a tax, beginning with the year 1907, in such amount as, in their judgment they may deem necessary or advisable, but not to exceed one mill upon all taxable property in such county, for the purpose of creating a fund to be known as "River improvement fund." [L. '07, p. 109, § 1.]

See supra, § 4057-1, county flood prevention.

See supra, § 4386, improvement by diking and drainage districts.

See supra, § 8388, logging improvement.

See supra, § 9175, power of third and fourth class cities to improve.

§ 9626. [8121.*] Manner of Improvements.

Said fund shall be expended by such county commissioners to acquire by condemnation or otherwise, any land bordering upon, or in the vicinity of the banks of any river or stream to be improved, which in their judgment it is advisable to acquire, to strengthen and preserve the banks of any river or stream and prevent overflow thereof, and confine such river or stream within its proper channel, or to straighten the channel by dredging or construction of a new channel; to construct any levee, em-

bankment, channel or other construction at such point where such land is acquired, as in their judgment they may deem necessary or advisable, to protect and render more secure the banks of any river by constructing therein stone or masonry work, contrivance or piling or such other construction as in their judgment is best adapted to accomplish such purpose; to remove log jams or obstructions that may be or hereafter form in such river, and to do any other act to prevent the formation of any obstruction in such river or stream. [L. '19, p. 266, § 1; L. '07, p. 109, § 2.]

§ 9627. [8122.] River Patrols.

The board of county commissioners are hereby authorized to employ such persons as they deem necessary and fix their compensation to patrol such rivers and streams and remove such log jams or obstructions now existing or which may hereafter form, and for the purpose of preventing the formation thereof, and who shall perform such other duties as are contemplated by this act and directed by said board of county commissioners. [L. '07, p. 110, § 3.]

"Act" refers to §§ 9625—9628.

§ 9628. [8123.] Expenditure of Fund.

All expenses to be incurred in accomplishing the objects authorized by this act shall be paid out of said river improvement fund and which fund shall be used for no other purpose than the purposes contemplated by this act. [L. '07, p. 110, § 4.]

"Act" refers to §§ 9625—9628.

§ 9629. [8124.] River Improvement Districts—Organization.

Whenever fifty electors and resident taxpayers desire to provide for the deepening, widening, or otherwise improving the channel of any navigable river in this state or on the border thereof they may by petition propose the organization of a river improvement district under the provisions of this act; and when so organized such district shall have the powers conferred, or that may thereafter be conferred by law upon such river improvement district. [L. '03, p. 270, § 1.]

"Act" refers to §§ 9629—9650.

§ 9630. [8125.] Petition — Accompanied by Bond — Hearing — Notice of Election.

Such petition shall first be presented to the board of county commissioners in the county in which the improvements are proposed to be made, which petition shall set forth and particularly describe the proposed boundaries of such district, and the nature, character and extent of the proposed improvements, and shall pray that the same may be organized under the provisions of this act. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the commissioners, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all of the costs in case such organization shall not be effected. Such petition shall be presented at a regular meeting of the said board of commissioners and shall be pub-

lished for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where said petition is presented, together with a notice stating the time of meeting at which the same will be presented. When such petition is presented the said board of commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all; and on the final hearing may make such changes in the proposed boundaries as they may find proper, and shall establish and define such boundaries. Said board of commissioners shall then order an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act, and for the election of a board of directors consisting of five members. Said board of commissioners shall cause notice to be given of such election. The notice shall describe the boundaries so established, the character, nature and extent of the proposed improvements, and the election of five directors to serve until their successors are elected and qualified, and shall designate a name for such proposed district, and the notice shall be published for at least three weeks prior to such election in a newspaper published in said county and having a general circulation in the proposed district. Such notice shall require the electors to cast ballots which shall contain the words "River Improvement District—Yes," and "River Improvement District—No," or words equivalent thereto; and to vote for five persons to constitute the board of directors. [L. '03, p. 270, § 2.]

"Act": See note to § 9629.

§ 9631. [8126.] Election—How Conducted.

Such election shall be conducted in accordance with the general election laws of the state, except that no particular form of ballot shall be required. The voting precincts shall be the same unless changed by the commissioners. [L. '03, p. 271, § 3.]

§ 9632. [8127.] Qualifications of Voters.

No person shall be entitled to vote at any election held under the provisions of this act, unless he is a qualified elector of the district and possesses all the qualifications required of electors under the laws of the state. [L. '03, p. 271, § 4.]

"Act": See note to § 9629.

§ 9633. [8128.] Canvass by Commissioners—Oath of Directors.

The board of county commissioners shall meet on the first Monday next succeeding such election and proceed to canvass the votes cast thereat; and if upon such canvass it appear that at least a majority of all votes cast are "River Improvement District—Yes," the said board shall, by an order entered in their minutes, declare such territory duly organized as a "River Improvement District" under the name and style theretofore designated, and shall declare the five persons receiving respectively the highest number of votes for directors, to be duly elected directors. From the making of such order the organization of such district shall be complete, and the board of directors elected at such election shall be entitled

to enter upon the duties of their office upon their taking and subscribing to an oath that they will faithfully and impartially and to the best of their ability perform the duties of directors of said district. [L. '03, p. 271, § 5.]

Cited in 56 Wash. 695, 696.

§ 9634. [8129.] Term of Office of First Directors.

The board of directors elected at the first election held under the provisions of this act shall hold office until the second Monday in January the year succeeding the January next succeeding their election, and until their successors are elected and qualified. [L. '03, p. 272, § 6.]

"Act" refers to §§ 9629—9650.

§ 9635. [8130.] Biennial Elections.

Biennial elections for the election of a board of directors shall be held on the second Tuesday of December. The board of directors shall prescribe voting precincts for such elections. The general law governing the election of officers of cities of the third class as far as applicable shall be followed in the election of directors. The polls shall be opened at 1 o'clock P. M. and closed at 6 o'clock P. M. The form of ballot prescribed by the general law need not be adopted. The returns of the election shall be delivered to the secretary of the board. The board of directors shall meet on the first Monday following the election and canvass the returns, and declare the result of the election. [L. '03, p. 272, § 7.]

§ 9636. [8131.] Term of Office of Directors—Oath.

The board of directors elected at the biennial election shall hold office for two years from the second Monday in January next succeeding their election and until the election and qualification of their successors. Before entering upon the duties of their office, the directors shall take and subscribe to an oath that they will faithfully and impartially and to the best of their ability perform the duties of directors of said district. [L. '03, p. 272, § 8.]

§ 9637. [8132.] Directors—Eligibility—Vacancies, How Filled.

None but qualified electors residing within the said district shall be eligible to hold the office of director. In case of a vacancy in the membership of the board of directors, such vacancy shall be filled by appointment by the remaining members of the board, and such appointees shall hold the office until the next general election for the election of directors and until his successor is elected and qualified. [L. '03, p. 272, § 9.]

§ 9638. [8133.] Organization of First Board.

The board of directors elected at the first election held under the provisions of this act shall meet on the second Monday following the election and organize the said board, elect a president from their number, and appoint a secretary who shall hold his respective office during the pleasure of the board of directors. [L. '03, p. 273, § 10.]

"Act" refers to §§ 9629—9650.

§ 9639. [8134.] Duties and Powers of Directors.

The board of directors shall consist of five members, and they shall have power and it shall be their duty to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ such agents, officers and employees as may be required, and make and adopt such rules and by-laws as may be deemed necessary for carrying into effect the provisions of this act. [L. '03, p. 273, § 11.]

"Act" refers to §§ 9629—9650.

§ 9640. [8135.] Regular and Special Meetings—Quorum, etc.

Regular meetings of the board shall be held at such times as the board may designate. Special meetings may be held whenever a majority of the board deems it advisable, but no special meeting shall be held unless personal notice is given to all members of the board of the time and place of the meeting. All meetings of the board must be public, and three members shall constitute a quorum for the transaction of business, but on all questions requiring a vote, there shall be a concurrence of at least three members of said board. [L. '03, p. 273, § 12.]

§ 9641. [8136.] Tax Levy—Sale of Bonds—Use of Funds.

For the purpose of carrying into effect the provisions of this act, the board of directors are empowered to levy a tax upon the taxable property within the district, in the manner hereinafter provided, and they are authorized when directed by a vote of the people of the district in the manner hereinafter specified to sell the bonds of the district to raise funds to carry on the work. The money derived from the sale of bonds shall be used exclusively in making public improvements for the benefit of the people of the district, said improvements to consist of deepening, widening or otherwise improving the channel of any navigable river within or adjacent to any district organized under the provisions of this act and to be for the purpose of extending and aiding navigation and commerce on such river in the interest and for the benefit of the people in such district. [L. '03, p. 273, § 13.]

"Act" refers to §§ 9629—9650.

§ 9642. [8137.] Special Election on Question of Bonds—Issuance of Bonds.

Whenever the board of directors deem it necessary or expedient to raise money for the purposes specified in section 9641, they shall call a special election to determine whether the district shall issue bonds. At such election there shall be submitted to the electors of said district possessing the qualifications prescribed in this act the question whether or not the bonds of said district in the amount so determined shall be issued. Notice of such election must be given by posting notices in three public places in each precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the district is situated and having a general circulation therein, for at least three successive weeks. Such notice must specify the time of holding the election and the amount of bonds proposed to be issued.

Said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act applicable to the holding of elections for the election of directors. Provided, that no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds, Yes" and "Bonds, No," or words equivalent thereto. If a majority of the votes cast are "Bonds, Yes," the board may then issue bonds in the amount authorized. If the majority of the votes cast are "Bonds, No," the result shall be entered in the records of the board, but no bonds shall be issued unless a majority vote is cast in favor of such issuance. Whenever thereafter said board, in its judgment, deems it for the best interests of the district that the question of the issuance of bonds for said amount or any amounts shall be submitted to said electors, it shall so declare said record in its minutes and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous election. Said bonds shall be payable in gold coin of the United States and shall be issued in denominations of not less than one hundred or more than one thousand dollars, shall be numbered from one up consecutively, shall bear the date of their issue, shall be payable not more than twenty years from date, and redeemable at any time after the expiration of ten years; shall bear interest not exceeding six per cent per annum, payable semi-annually, with interest coupons attached, and the principal and interest shall be payable at such place as may be designated in such bonds. The bonds and each coupon shall be signed by the president of the board and attested by the secretary of the board. Such bonds shall express upon their face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of the issue of which such bonds are a part. The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. [L. '03, p. 273, § 14.]

"Act" refers to §§ 9629—9650.

§ 9643. [8138.] Sale of Bonds.

The board may sell the bonds authorized to be issued, from time to time, in such quantities as may be necessary and most advantageous to raise money for the purpose mentioned in section 9641. The board shall at a meeting, by resolution, declare its intention to sell a specified amount of bonds and the day and hour and place of sale, and shall cause publication thereof at least twenty days in such newspapers as they may deem most advantageous. This notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids. Provided, however, that the board shall have the right to sell such bonds, or any of them, at private sale whenever they deem it for the best interest of the

district so to do. Provided, further, that such bonds shall not be sold for less than their face value. [L. '03, p. 275, § 15.]

§ 9644. [8139.] Payment of Bonds.

Said bonds and interest thereon shall be paid by revenue derived from any annual assessment upon all the taxable property in the district, and all taxable property within the district shall be and remain liable to be assessed for such payments as hereinafter provided. [L. '03, p. 275, § 16.]

§ 9645. [8140.] Limit of Indebtedness.

The total indebtedness authorized to be incurred under the provisions of this act shall never exceed two and one-half per cent of the taxable property within the district as ascertained by the last assessment for state and county purposes, and any debts contracted in excess of such limitation shall be invalid and void. [L. '03, p. 275, § 17.]

"Act" refers to §§ 9629—9650.

§ 9646. [8141.] Annual Assessment for Liquidation of Bonds—Call.

Five years before said bonds shall become due the directors of the district are authorized and required annually to levy an assessment sufficient to liquidate said bonds at maturity, such assessment shall be levied and collected as other taxes authorized by this act are collected, but the money arising therefrom shall be retained by the county treasurer until the maturity of bonds. Whenever the treasurer has upon hand two thousand dollars of the special fund for the payment of said bonds, he shall notify the holders of such bonds for the presentation to him of the bonds issued under the provisions of this act as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with number one, until all of said bonds are paid: Provided, that thirty days after the giving of such notice if said bonds are not presented the interest thereon shall cease. [L. '03, p. 275, § 18.]

"Act" refers to §§ 9629—9650.

§ 9647. [8142.] Levy for Interest on Bonds.

It shall be the duty of the directors annually to levy an assessment sufficient for the payment of interest coupons hereinbefore mentioned as they fall due. [L. '03, p. 276, § 19.]

§ 9648. [8143.] Sinking Fund—Limit and Collection of Taxes.

The board of directors shall determine the amount to be raised to pay the interest on the bonds outstanding, and whatever sum the board deems advisable to raise for the purpose mentioned in section 9641, and when necessary to provide for a sinking fund and shall determine the rate necessary to raise such sums based upon the totals of the taxable property within the district as equalized and determined by the county board of equalization. The rate so determined shall be certified to the county auditor of the county in which the district is located, and by him extended upon the tax-rolls of the county, in a separate column. The

rate so determined shall in no event exceed two and one-half mills on the dollar on the taxable property within the district for any one year. The auditor shall certify the same to the county treasurer as other taxes are certified, and the treasurer shall collect the taxes, keeping them separate from other taxes, and shall pay therefrom said interest coupons as they mature and said bonds as they may be called. [L. '03, p. 276, § 20.]

§ 9649. [8144.] General Laws Applicable to Assessment and Collection.

All the laws governing the assessment and collection of taxes for general state and county purposes shall apply to the assessment and collection of taxes levied under the provisions of this act, except that the taxes collected under the provisions of this act shall be kept separate, and apart from other taxes. In case any tax levied under this act shall become delinquent, same shall be included, with taxes levied for other purposes, in the certificate of delinquency that may be issued, and any proceeding to foreclose said certificate of delinquency shall include the amount of delinquent tax levied for river improvements under this act. [L. '03, p. 276, § 21; L. '05, p. 208, § 1.]

"Act" refers to §§ 9629—9650.

§ 9650. [8145.] Directors — No Salary — Not to have Interest in Contracts.

The board of directors shall receive no salary for services performed under the provisions of this act, nor shall they be interested directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officers shall be deemed guilty of a misdemeanor and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and the said contract in which said director was interested shall be void. [L. '03, p. 277, § 22.]

"Act" refers to §§ 9629—9650.

§ 9651. [8145-1.] Boundary Line Rivers—Overflow—Improvement.

Wherever and whenever a river is or shall be the boundary line or part of the boundary line between two counties, or it, or its tributaries or outlet or part thereof, flows through parts of two counties, and the waters thereof have in the past been the cause of damage, by inundation or otherwise, to the roads, bridges or other public property situate in or to other public interests of both such counties, or the flow of such waters shall have alternated between the said counties so at one time or times such waters shall have caused damage to one county and at another time or times to the other county, and if it shall be deemed by the boards of county commissioners of both counties to be for the public interests of their respective counties that the flow of such waters be definitely confined to a particular channel, situate in whole or in part in either county, in a manner calculated to prevent such alternation or to prevent or

lessen damage in the future, it shall be lawful for the two counties, and their boards of county commissioners are hereby empowered, pursuant to resolution, to enter into a contract in writing in the names of the respective counties for the purpose of settling all disputes in relation to any such situation, and providing ways and means for the control and disposition of such waters. Any such contract may provide:

(a) That it shall be operative in perpetuity, or only for a term of years or other measure of time to be specified therein.

(b) The amount of money to be expended by each county during each year of the life of said contract, or such other method of determining the amount of expenditure or dividing the financial burden as may be agreed upon.

(c) That an annual tax shall be levied, at the same time and in the same manner as other county taxes are levied, each year during the life of the contract, by the county commissioners of each county. The annual tax herein provided for need not be levied at the same rate for each county, but shall be at such rate in each county as will produce annually the amount of money for each county as is required for the fulfillment of the contract on its part: Provided, however, that in no event shall any such tax levy by either county exceed one mill on the dollar for any one year.

(d) That the general scheme for the improvement of such river shall be as stated in such contract, but by consent of the contracting parties, pursuant to resolution of each board of county commissioners, such scheme may be modified from time to time during the life of the contract. The contract may but need not provide the details of such scheme, but must designate the general purpose to be accomplished. So far as details are not specified in the contract, same shall be for future determination by joint action of the two boards of county commissioners. Any such contract may be subsequently modified or abrogated by mutual consent evidenced by separate resolution of both boards of county commissioners. [L. '13, p. 156, § 1.]

See *supra*, § 4057-1, flood prevention and control by counties.

Cited in 104 Wash. 269; 111 Wash. 496.

§ 9652. [8145-2.] Funds Expended—Work—How Done.

When such a contract shall have been entered into the prosecution of the work of improvement and the expenditure of funds thereof shall be determined upon, controlled and provided for by joint action of the boards of county commissioners of the two counties. So acting jointly, they shall have power to employ subordinates, purchase material or equipment in open market or by contract, let contracts for work, or cause work to be done by day labor, and to reject any and all bids received for work or material. All vouchers, pay-rolls, reports, contracts and bonds on contracts shall be in duplicate, one copy to be filed in the office of the county auditor of each county: Provided, however, that the expenditure of said funds must be made in such manner so that the fund from each county is drawn on or expended alternately and such alternate expenditure shall be in proportion to the amount contributed by each county as nearly as may be practicable. [L. '13, p. 158, § 2.]

§ 9653. [8145-3.] Tax Levy in Each County—Warrants—Claims.

When such a contract shall have been entered into it shall be the duty of each of the boards of county commissioners to make for their respective counties, each year, a tax levy at a rate sufficient to meet the requirements of the contract to be performed by the county, or sufficient to provide such lesser amount as the boards of county commissioners shall agree upon for such year, to be evidenced by separate resolution of each board, and when such levy shall be made the same shall be extended upon the tax-rolls of the county levying the same as other taxes shall be extended, and shall be collected in the same manner and shall be a lien upon the property as in the case of other taxes. The fund realized in each county by such tax levy shall go into a separate fund in the treasury of the county collecting the same, to be designated inter-county river improvement fund, and the entire fund so collected in the two counties shall be devoted to and be disbursed for the purposes specified in such contract and as in this act provided, and for no other purpose, but without regard to the particular county in which the work is performed, material required or expenditure made, it being the intent that the entire fund realized in the two counties shall be devoted to the one common purpose as if the two counties were one county and the two funds one fund. The fund in each county shall be disbursed by the county treasurer of such county upon warrants signed by the county auditor of that county. Such warrants shall be issued by order of the board of county commissioners of such county, or a majority thereof. Each county auditor shall, whenever requested by the county auditor of the other county, furnish the county auditor of the other county a statement of payments into and warrants drawn upon the fund of his county from time to time, and in addition thereto, each county auditor shall on the first Monday of January, April, July and October each year during the life of the contract furnish the other a complete statement thereof. Obligations incurred in the prosecution of such improvement and warrants issued shall be payable only out of said special funds, and no general obligation against or debt of either county shall be created thereby or by any contract entered into by virtue of this act, but it is not the intent of this act to deny to either county the right to have in the courts any proper proceeding to compel compliance with such contract on the part of the other county. [L. '13, p. 158, § 3.]

§ 9654. [8145-4.] Eminent Domain—Proceedings.

When such a contract shall have been entered into the power of eminent domain is hereby vested in each of such counties, to acquire any lands necessary to straighten, widen, deepen, dike or otherwise improve any such river, its tributaries or outlet or to strengthen the banks thereof, or to acquire any land adjacent to such river, or its tributaries, or the right to cut and remove timber upon the same for the purpose of preventing or lessening the falling of timber or brush into the waters of such river or tributaries, or to acquire any rock quarry, gravel deposit or timber for material for the prosecution of such improvement, together with the necessary rights of way for the same. Any such land, property or rights may be acquired by purchase instead of by condemnation proceedings.

Said right of eminent domain shall extend to lands or other property owned by the state or any municipality thereof. The title to any such lands, property or rights so acquired shall vest in the county in which situate for the benefit of such enterprise and said fund, but when said contract shall have terminated by lapse of time or for any other reason, then such title shall be held by such county independent of any claims whatsoever of the other county, but any material, equipment or other chattel property on hand shall be converted into money and the money divided between the two counties in the ratio of their respective contributions to the fund. The exercise of such rights of eminent domain or purchase shall rest in the joint control of the two boards of county commissioners. Such eminent domain proceedings shall be in the name of and had in the county where the property to be acquired is situate, provided if either county shall fail or refuse to institute and prosecute any condemnation proceedings when directed so to do by any legal meeting provided for in section 9655, such proceeding may be instituted and prosecuted by and in the name of the other county. The proceedings may conform to the provisions of sections 921 and 926, inclusive, of this code, or to any general law now or hereafter enacted governing eminent domain proceedings by counties. The awards in and costs of such proceedings shall be payable out of such funds. The purposes in this act specified are hereby declared to be county purposes of each and both of such counties. [L. '13, p. 159, § 4.]

§ 9655. [8145-5.] Joint County Meeting—Procedure.

When such a contract shall have been entered into and occasion shall arise for the joint action of the two boards of county commissioners whether such joint action is provided for in this act or otherwise desired upon any matter having relation to such contract or the prosecution of such improvement, such joint action may be secured by a notice calling a joint meeting signed by two county commissioners, designating the time and place in either county of such meeting, served by one of the two county auditors upon the remaining county commissioners at least seven days (exclusive of the date of service or mailing) prior to the time so designated. If the notice is signed by two county commissioners of the same county the place of meeting shall be at some place in the other county designated in the notice. Such service may be personal or by mail addressed to the member in care of the county auditor of his county. The six county commissioners may constitute a legal meeting without notice by being present together for that purpose. The auditor's certificate of such personal service or mailing, attached to a copy of the notice, shall be made a part of the records of the meeting and be competent proof of the fact. Except in the case hereinafter provided for, the presence of four of the county commissioners shall be necessary to constitute a legal meeting. Each meeting shall be presided over by one of those present selected by vote. The county auditor of the county wherein the meeting is held shall be secretary of the meeting, and shall make duplicate record of its proceedings, one of which, with his certificate thereon, shall be forwarded to the county auditor of the other county, and such record shall be a part of the record of the board of county commission-

ers of each county. A majority vote of those present at any legal meeting shall be determinative upon any question properly considered at the meeting, and shall be binding upon each county as if enacted or adopted by its own board of county commissioners separately, but no joint meeting whatsoever shall in any manner continue, extend, change, alter, modify, or abrogate the contract when made or any of the terms and conditions contained therein. Each county commissioner shall be paid out of said fund in his own county all disbursements made by him for traveling and other expenses incurred in attending any joint meeting or in any way connected with the prosecution of the improvement. Any legal meeting shall have power to adjourn to another time and place. An adjourned meeting shall have all the powers of the meeting of which it is an adjournment, but shall have no power after the end of the thirtieth day following the date of the original meeting of which it is an adjournment. If the three county commissioners of either county shall fail to attend any two meetings consecutively called, the notice for the next succeeding meeting may be also served upon the special commissioner hereinafter provided for, and if he and three county commissioners attend pursuant to such notice the four shall constitute a legal meeting, but if he does not so attend and three county commissioners do attend, the same shall constitute a legal meeting: Provided, all notices calling a joint meeting shall specify distinctly and separately each question to be considered at said meeting; and it shall be unlawful to consider any question at such meeting or at any adjourned meeting thereof except those which have been distinctly and separately specified, except in cases where all six county commissioners are present or five county commissioners present are unanimous on the question, and in any action which may be taken on any question other than those specified in the notice shall be void and shall not be binding on either county, except in cases where all six county commissioners are present or the action was by unanimous vote of five county commissioners present at such meeting. [L. '13, p. 161, § 5.]

§ 9656. [8145-6.] Special Commissioner—Duties.

When such a contract shall have been entered into there shall be designated at the first legal joint meeting, or adjournment thereof, held in each calendar year a special commissioner to serve as such until the first joint meeting held in the ensuing year. If such designation shall not be made at any such first annual meeting, the United States engineer in charge of the district in which such improvement is located shall be such special commissioner until the next succeeding first annual meeting. If a special commissioner shall for any reason fail to serve as such officer, or be removed by unanimous vote of any legal meeting, a successor to him may be chosen at any subsequent legal joint meeting during his term. Such special commissioner shall have power to attend and vote at any joint meeting in the following cases and none other, to wit: (1) In cases specially so provided in section 9655; (2) In any case where the vote of any such joint meeting shall stand equally divided upon any question arising under this act or such contract or in the prosecution of the work of improvement. The special commissioner shall have no voice or

vote except upon questions on which the vote of the county commissioners is equally divided. The procedure in cases covered by the foregoing subdivision (2) of this section shall be substantially as follows: It shall be the duty of the secretary of the meeting at which the division shall occur, if the attendance of the special commissioner at that meeting is not secured, to forthwith transmit to the special commissioner written notice of the fact of disagreement and the question involved, and of the time and place to which the meeting shall have been adjourned or at which the question will recur. If there shall be no such adjournment of the meeting, or if the secretary shall not give such notice, any two commissioners may in the manner provided in section 9655 call a joint meeting for the consideration of the question in dispute, and in such event either county auditor may give such notice to the special commissioner. No informality in the mode of securing the attendance of the special commissioner shall invalidate the proceedings of or any vote taken at any meeting which he shall attend and which he is empowered to attend by the provisions of this act. The special commissioner shall receive, to be paid equally out of the two funds, his traveling and other expenses incurred in attending meetings or otherwise in connection with the work of improvement, and such compensation for his services as shall be fixed by the joint meeting which shall have selected him, or failing to be so fixed, his compensation shall be ten dollars per day of actual service. [L. '13, p. 162, § 6.]

§ 9657. [8145-7.] Act not Exclusive.

Nothing in this act contained shall be construed to prevent any county which may be a party to such contract from further caring for any such river or the banks thereof, as authorized so to do by existing laws or by such laws as may be hereafter enacted, provided the rights of neither county, as fixed by contract, shall be impaired thereby. [L. '13, p. 164, § 7.]

§ 9658. [8145-8.] Act Creates no Liability.

No legal claim of any kind or character whatsoever in favor of one county and against the other shall be based upon or created by the enactment hereof, except such as may arise when the contract herein provided for shall have been entered into. After such contract shall have been entered into, should any loss or damage be sustained by either county occasioned by the overflow of any such river, if caused by any act or omission to act of the other county, its officers or agents, or any other cause whatsoever, then such county so suffering or sustaining said loss shall not be entitled to recover therefor from the other county, nor shall any cause of action, legal or equitable, be based thereon: Provided, however, that if either county shall suffer loss or damage because of the failure or refusal of the other county to perform any such contract on its part to be performed, the injured county shall have a cause of action against the defaulting county to recover the same, but the limit of recovery for any loss or damage suffered in any one year shall not exceed the sum of ten thousand dollars, and any such recovery shall be limited to such special fund, and in no event to be recoverable out of the gen-

eral fund of such defaulting county. If any such loss or damage shall be liquidated in an amount by agreement or by judgment, the defaulting county shall increase its tax levy for said special fund for the ensuing year sufficiently to provide for such liquidated amount: And provided further, that either county may have any proper action in the courts to compel the performance of the contract or any duty imposed thereby or by this act. [L. '13, p. 164, § 8.]

Nonliability of county, see *infra*, § 9663.

§ 9659. [8145-9.] Warrants may be Issued—Limit of Tax Levy.

When such a contract shall have been entered into, it shall be lawful to issue warrants upon said fund, though there be at the time of such issuance no money in the fund, but in such cases the aggregate of such warrants so issued in any year shall not exceed one-half the amount of the next annual tax levy required by such contract. Such warrants shall be stamped by the county treasurer when presented to him for payment, to bear interest at a certain rate thereafter until paid, such rate to be the then current rate as determined by the county auditor. [L. '13, p. 165, § 9.]

§ 9660. [8145-10.] Joint Acquisition of Property—Disposition.

Whenever two counties of this state, acting under a contract made pursuant to sections 9651 to 9659, shall make an improvement in connection with the course, channel or flow of a river, shall acquire property by statute, purchase, gift or otherwise, said counties, acting through their boards of county commissioners jointly shall have the power, and are hereby authorized to sell, transfer, trade, lease, or otherwise dispose of said property by public or private, negotiation or sale. The deeds to the property so granted, transferred, leased or sold shall be executed by the chairman of the meeting of the joint boards of county commissioners, and attested by the secretary of said joint meeting where the sale is authorized. The proceeds of the sale of said property shall be used by said counties for the carrying on, completion or maintenance of said improvement, as directed by the boards of county commissioners of said counties acting jointly. [L. '15, p. 299, § 1.]

§ 9661. [8145-11.] Effect of Act.

This act is not intended to modify, change, alter or amend sections 9651 to 9659. [L. '15, p. 299, § 2.]

§ 9662. [8145-12.] Joint Grant of State's Title to Reclaimed River Channels.

Whenever two counties of this state, acting under a contract made pursuant to sections 9651 to 9659, shall make an improvement in connection with the course, channel or flow of a river, thereby causing it to abandon its existing channel, bed, bank or banks for the entire distance covered by said improvement, or for any part or portion thereof, or by said improvement shall prevent a river from resuming at a future time an ancient or abandoned channel or bed, or shall construct improvements intended so to do, all the right, title and interest of the state of Wash-

ington in and to said abandoned channel or channels, bed or beds, bank or banks, up to and including the line of ordinary high water, shall be and the same is hereby given, granted and conveyed jointly to the counties making such improvement. [L. '15, p. 375, § 1.]

Cited in 111 Wash. 497.

The possessory rights of persons upon an old river channel abandoned before the admission of the state cannot be questioned by the state which never had

title to the land, and the state can pass no title by virtue of this act: *George v. Pierce County*, 111 Wash. 495, 191 Pac. 406.

§ 9663. Liability of County for Flood Prevention and Navigation Improvements.

No action shall be brought or maintained against any county alone or when acting jointly with any other county under any law, its or their agents, officers or employees, for any noncontractual acts or omissions of such county or counties, its or their agents, officers or employees, relating to the improvement, protection, regulation and control for flood prevention and navigation purposes of any river or its tributaries and the beds, banks and waters thereof: Provided, that nothing contained in this act shall apply to or affect any action now pending or begun prior to the passage of this act. [L. '21, p. 747, § 1.]

See *supra*, § 4057-1, flood prevention by counties.

CHAPTER VI.

CANAL, HARBOR AND RIVER IMPROVEMENTS.

River improvements: See the preceding chapter.

§ 9664. [8146.] County may Construct or may Aid United States in Construction—Limit.

Whenever the board of county commissioners of any county of the first class in this state shall deem it for the interest of the county to construct or to aid the United States in constructing a canal to connect any bodies of water within the county, such county is hereby authorized to construct such canal or to aid the United States in constructing the same and to incur indebtedness for such purpose to an amount not exceeding five hundred thousand (\$500,000) dollars and to issue the negotiable bonds of the county therefor in the manner and form provided in sections 5576 to 5581, *supra*, inclusive. [L. '07, p. 348, § 1.]

The title to this act was not broad enough to include the provisions of section 3, validating prior acts of counties in that behalf under a prior invalid law; the constitutional requirement that no bill

shall embrace more than one subject and that expressed in the title applying especially to enactments of a retroactive character: *State ex rel. Potter v. King County*, 49 Wash. 619, 96 Pac. 156.

§ 9665. [8147.] Public Purpose.

Such purpose is hereby declared to be a county purpose. [L. '07, p. 348, § 2.]

§ 9666. [8147-1.] Joint Aid River and Harbor Improvements—Bonds—Election.

Whenever the board of county commissioners of any county of the first class of this state shall deem it for the interest of the county to engage in or to aid the United States of America, the state of Washing-

ton, or any adjoining county or any city of this state, or any of them, in construction, enlargement, improvement, modification, repair or operation of any harbor, canal, waterway, river channel, slip, dock, wharf, or other public improvement, or any of the same, for the purposes of commerce, navigation, sanitation and drainage, or any thereof, or to acquire or operate wharf sites, dock sites, or other properties, rights or interests, or any thereof, necessary or proper to be acquired or operated for public enjoyment of any such public improvement, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness, or any thereof, such county is hereby authorized and empowered, by and through its county commissioners, to engage in or aid in any such public work or works, operation or acquisition, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount, which, together with the then existing indebtedness of such county, shall not exceed five per centum of the taxable value of the taxable property in said county, as shown by the last previous assessment-roll thereof for state and county purposes, and to issue the negotiable bonds of the county for all or any of such indebtedness and for the payment thereof, in the manner and form and as provided in sections 5576 to 5581, inclusive, of this code, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or in moneys derived from sale or sales thereof, or partly in such bonds and partly in such money: Provided, that said commissioners shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [L. '11, p. 3, § 1.]

Cited in 68 Wash. 663.

A bond issue in a specified sum for deepening the channel of a river "along the lines" laid out by Commercial Waterway District No. 1, and in a specified sum for diverting the waters of a river "along lines" adopted by Commercial Waterway District No. 2, is not invalid as being in aid of such districts, and beyond the authority of this section, where the bonds would be authorized if the act be given only such force as it would have had if it had been a law when the bonding question was submitted: *Blaine v. Hamilton*, 64 Wash. 353, 116 Pac. 1076, 35 L. R. A. (N. S.) 577.

Power is not conferred upon a county to condemn lands in a city by this section, authorizing a county to sell bonds in aid of enterprises undertaken by the state or county in aid of commerce and the "acquisition" of canals, docks, wharves, etc., the act not expressly conferring the power of eminent domain, and the power never being implied from the power to "acquire": *State ex rel. Wauconda Investment Co. v. Superior Court*, 68 Wash. 660, 124 Pac. 127, Ann. Cas. 1913E, 1076.

§ 9667. [8147-2.] County Purpose.

That any and every such purpose as is mentioned in the foregoing section is hereby declared to be a county purpose. [L. '11, p. 4, § 2.]

§ 9668. [8147-3.] Voting Prior to This Act.

That, in case, at any special or general election, in any such county, the question of incurring any such indebtedness or issuing any such bonds has been submitted to the vote of the voters of such county at any time within one year next prior to the day when this act shall become a law and be in force, and the vote at such election was such as

would have authorized, by sufficient majority of votes, the incurring of such indebtedness and the issuance of such bonds had this act been then in force, and such vote been taken pursuant to the provisions of this act, then, and in that case, such vote and all the proceedings in connection therewith had or taken, in manner and form aforesaid, be, and the same hereby are, validated and confirmed, and such county is authorized and empowered, by and through its county commissioners, to proceed with the matters of incurring such indebtedness and issuing such bonds and payment of such indebtedness, by sale of such bonds, or otherwise, and with the matter of engaging or aiding in the construction or other public work or acquisition or operation, intended or contemplated in incurring such indebtedness, in substantially the same manner as in cases under section 9666. [L. '11, p. 5, § 3.]

§ 9669. [8148.] Assessment Districts—Petition to Establish, etc.

Every county in this state is hereby authorized and empowered, by and through its county commissioners, whenever the government of the United States is intending or proposing the construction or operation of any river, lake, canal or harbor improvement, partly or wholly within such county, and whenever said board of county commissioners shall adjudge, upon a petition therefor filed with it and signed by at least one hundred (100) freeholders of said county who each own realty of the assessed valuation of not less than five thousand dollars, situated within the limits of the improvement district sought to be created, that it is for the general benefit and welfare of the people of the county, that such river, lake, canal or harbor improvement be made and completed to define and establish an assessment district within such county and to levy an assessment upon so much of the taxable real estate of such county as shall be specially benefited by such improvement as hereinafter provided, for the purpose of paying the expenses of such improvement, or so much thereof as said board of county commissioners shall determine, not in any instance exceeding one per cent of the taxable valuations of all real and personal property in the entire county as appearing on the then last assessment-roll. Such improvement shall be known as river and harbor improvement. [L. '07, p. 582, § 1.]

Cited in 58 Wash. 512; 63 Wash. 462; 76 Wash. 278, 283, 287.

Authority for Assessment for Lake Washington Canal: See Remington's Digest, Canals, § 2-1; State ex rel. Burke

v. Board of Commrs., 58 Wash. 511, 109 Pac. 350; Bilger v. State, 63 Wash. 457, 116 Pac. 19; Osborne, Tremper & Co. v. King County, 76 Wash. 277, 136 Pac. 138.

§ 9670. [8149.] Improvement Commission—Appointment—Oath.

Whenever the board of county commissioners of any such county shall have adjudged as provided in section 9669, said board shall thereupon apply to the person, who, for the time being, shall be judge of the United States district court, for the district within which the county shall be situated, to name eleven reputable citizens and freeholders of such county and file a list thereof with said board of county commissioners. The persons so named, or a majority of them shall act as a commission, and be known as the "River and harbor improvement commission of — county," and shall receive no compensation, except their actual necessary expenses, including necessary clerical assistance, to be

audited by the board of county commissioners; and they shall be deemed the agents of the county in the performance of the duties imposed upon them by this chapter. Each member of such commission shall, before entering upon his duties, take and subscribe an oath, substantially as follows:

"State of Washington, } ss.
County of —, }

I, the undersigned, a member of the river and harbor improvement commission of — county, to define and establish the assessment district and assess the costs of the following improvement (here give the general description of the improvement), do solemnly swear (or affirm, as the case may be), that I will well and truly discharge my duties as a member of said commission." In case the person who is United States judge shall be unable or decline to act, the board of county commissioners shall name the eleven persons to act as such commission. [L. '07, p. 582, § 2.]

§ 9671. [8150.] Establishment of District—Assessment—State Lands.

It shall be the duty of such commission to define and establish an assessment district, within such county, comprising all the taxable real property, and also (with the limitations hereinafter expressed) the state shore lands, which shall be specially benefited by said river, lake, canal or harbor improvement, and to apportion and assess the amount of separate, special and particular benefits against each lot, block, parcel or tract of land or shore land within such district, by reason of such improvement. The commission in making the assessment shall include in the properties upon [which] the assessment is laid, all shore lands of the state, whether unsold or under contract of sale and subject to sale by it and as against all purchasers from the state or under contract to purchase such lands, the assessment shall be a charge upon such land and the purchaser's interest therein. The county auditor shall certify to the state commissioner of public lands a schedule of the state shore lands so assessed and of the assessment thereon, and the purchaser shall from time to time pay to the proper county treasurer the sums due and unpaid under such assessment, and at the time of such payment the county treasurer shall give in, in addition to a regular receipt for such payment, a certificate that such payment has been made, which certificate the purchaser shall immediately file with the commissioner of public lands, and no patent from the state nor deed shall issue to such purchaser, nor shall any assignment of his contract to purchase be approved by the commissioner of public lands until every matured installment of such assessment shall have first been fully paid and satisfied: Provided, however, that no such assessment shall create any charge against such shore land or affect the title thereof as against the state, and the state shall be as free to forfeit or annul such contract and again sell such land as if the assessment had never been made, and in case of such forfeiture or annulment the state shall be free to sell again such land entirely disembarassed and unencumbered of all right and claim of such former purchaser, and such purchaser shall have no right, interest

or claim upon or against such land or the state or such new purchaser or at all, but every such sum paid by such former purchaser upon such assessment shall be utterly forfeited as against him, his personal representatives and assigns, and shall inure to the benefit of such new purchaser. [L. '07, p. 583, § 3.]

§ 9672. [8151.] Assessment-roll.

Such commission shall also make, or cause to be made, an assessment-roll, in which shall appear the names of the owners of the property assessed, so far as known, the description of each lot, block, parcel or tract of land within such assessment district, and the amount assessed against the same, as separate, special or particular benefits, and certify such assessment-roll to the board of county commissioners, of such county within ten weeks after their appointment, or within such further time as may be allowed by the board of county commissioners of such county. [L. '07, p. 584, § 4.]

§ 9673. [8152.] Notice of Hearing on Assessment-roll.

After the return of the assessment-roll to the board of county commissioners they shall make an order setting a day for the hearing upon any objections to the assessment-roll by any parties affected thereby who shall be heard by said board of county commissioners as a board of equalization, which date shall be at least twenty (20) days after the filing of such roll. It shall be the duty of the board of county commissioners to give, or cause to be given, notice of such assessment, and on the day fixed for the hearing, as follows:

(a) They shall send or cause to be sent, by mail, to each owner of premises assessed, whose names and place of residence is known to them, a notice, substantially in this form, to wit:

“_____

“Your property (here describe the property) is assessed \$—— for river and harbor improvement to be made in this county.

“Hearing on the assessment-roll will be had before the undersigned, at the office of the county commissioners, on the —— day of —— 19——.

_____,
_____,
_____,

“Board of county commissioners.”

But failure to send, or cause to be sent, such notice, shall not be fatal to the proceedings herein prescribed.

(b) They shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places in such county, three of which shall be in the neighborhood of such proposed improvement, and by publishing the same at least five successive days in a daily newspaper of said county (if one is published daily), otherwise, for two weeks in a weekly newspaper of said county; which notice shall be signed by the board of county commissioners, and shall state the day and place of the hearing of objections to the assessment-roll, and the nature of the improvement; and that all interested parties will be heard as to any objections to said assessment-roll. [L. '07, p. 585, § 5.]

§ 9674. [8153.] Objections to Assessment.

Any person interested in any real estate affected by such assessment may appear and file objections to the assessment-roll, and the board of county commissioners may make an order regarding the time of filing such objections, as to them seems proper. As to all parcels, lots or blocks as to which no objections are filed within the time so fixed, the assessment thereon shall be confirmed. On the hearing, each party may offer proof and the board shall then have authority to affirm, modify, change and determine the assessment in such sum as to them appears just and right. When the assessment is finally equalized and fixed by the board of county commissioners, the clerk thereof shall certify the same to the county treasurer for collection, or if appeal has been taken from any part thereof, then so much thereof, as has not been appealed from, shall be certified. [L. '07, p. 586, § 6.]

§ 9675. [8154.] Appeals.

Any person who feels aggrieved by the final assessment made against any lot, block or parcel of land owned by him may appeal therefrom to the superior court of such county. Such appeal shall be taken within the time, and substantially in the manner prescribed by the laws of this state for appeals from justice's courts. All notices of appeal shall be filed with the board of county commissioners, and served upon the prosecuting attorney of the county. The clerk of the board of county commissioners shall at appellant's expense certify to the superior court so much of the record, as appellant may request, and the cause shall be tried in the superior court de novo.

Any person desiring to appeal from any final order or judgment, made by the superior court concerning any assessment authorized by this act, may appeal therefrom to the supreme court, in accordance with the laws of this state relative to such appeals, except that all such appeals shall be taken within thirty days after the entry of such judgment. [L. '07, p. 586, § 7.]

§ 9676. [8155.] Lien of Assessment—Collection—Interest, etc.

The final assessment shall be a lien, paramount to all other liens, except liens for taxes and other special assessments, upon the property assessed, from the time the assessment-roll shall be approved by said board of county commissioners and placed in the hands of the county treasurer, as collector. After said roll shall have been delivered to the county treasurer for collection, he shall proceed to collect the same, in the manner as other taxes are collected: Provided, that such treasurer shall give at least ten (10) days' notice in the official newspaper (and shall mail a copy of such notice to the owner of the property assessed, when the postoffice address of such owner is known, but failure to mail such notice shall not be fatal when publication thereof is made), that such roll has been certified to him for collection, and that unless payment be made within thirty (30) days from the date of such notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten (10) equal annual payments, with interest upon the whole sum so charged at a rate not to exceed seven per cent per annum.

Said interest shall be paid semi-annually, and the county treasurer shall proceed to collect the amount due each year by the publication of notice as hereinabove provided. [L. '07, p. 587, § 8.]

§ 9677. [8156.] Local Improvement Fund—Disbursement.

All moneys paid or collected on account of any assessments made pursuant to this chapter, shall be kept by the county treasurer in the county depository separate and apart from the other funds of the county, in a fund to be established by the board of county commissioners and to be known as "Local improvement fund, district No. — of — county"; and said money shall at all times be subject to the order of the United States government engineer, having said river and harbor improvement in said county in charge, and the county treasurer shall pay said money out upon drafts, drawn upon said fund, for the costs of said improvement, by said United States government engineer. If such government engineer is unable or unauthorized to act in the premises, then the county treasurer shall pay out said money for the costs of said improvement, upon the order of the board of county commissioners. [L. '07, p. 587, § 9.]

§ 9678. [8157.] Bonds—Issuance—Sale—Form—Interest Coupons.

In all cases, the county, as the agent of the local improvement district, shall, by resolution of its board of county commissioners, cause to be issued in the name of the county, the bonds for such local improvement district for the whole estimated cost of such improvement, less such amounts as shall have been paid within the thirty (30) days provided for redemption, as hereinabove specified. Such bonds shall be called "Local improvement bonds, district No. —, county of —, state of Washington," and shall be payable not more than ten (10) years after date, and shall be subject to annual call by the county treasurer, in such manner and amounts as he may have cash on hand to pay the same in the respective local improvement fund from which such bonds are payable, interest to be paid at the office of the county treasurer. Such bonds shall be issued and delivered to the contractor for the work from month to month in such amounts as the engineer of the government, in charge of the improvement, shall certify to be due on account of work performed, or, if said board of county commissioners resolve so to do, such bonds may be offered for sale after thirty (30) days' public notice thereof given, to be delivered to the highest bidder therefor, but in no case shall such bonds be sold for less than par, the proceeds to be applied in payment for such improvement: Provided, that unless the contractor for the work shall agree to take such bonds in payment for his work at par, such work shall not be begun until the bonds shall have been sold and the proceeds shall have been paid into a fund to be called "Local improvement fund No. —, county of —," and the holder or holders of such bonds shall look only to such fund for the payment of either the principal or interest of such bonds.

Such bonds shall be issued in denominations of one hundred dollars each, and shall be substantially in the following form:

"Local improvement bond, district number — of the county of —,"
state of Washington. No. —. N. B. —. \$ —.

"This bond is not a general debt of the county of — and has not been authorized by the voters of said county as a part of its general indebtedness. It is issued in pursuance of an act of the legislature of the state of Washington, passed the — day of — A. D. 1907, and is a charge against the fund herein specified and its issuance and sale is authorized by the resolution of the board of county commissioners, passed on the — day of — A. D. 1907.

"The county of —, a municipal corporation of the state of Washington, hereby promises to pay to —, or bearer, one hundred (100) dollars, lawful money of the United States of America, out of the fund established by resolution of the board of county commissioners on the — day of — A. D. 19—, and known as local improvement fund district number — of — county, and not otherwise.

"This bond is payable ten years after date, and is subject to annual call by the county treasurer at the expiration of any year before maturity in such manner and amounts as he may have cash on hand to pay the same in the said fund from which the same is payable, and shall bear interest at the rate of seven per cent per annum, payable semi-annually; both principal and interest payable at the office of the county treasurer. A coupon is hereto attached for each installment of interest to accrue thereon, and said interest shall be paid only on presentation and surrender of such coupon to the county treasurer, but in case this bond is called for payment before maturity each and every coupon representing interest not accrued at the expiration of the call shall be void. The board of county commissioners of said county, as the agent of said local improvement district No. —, established by resolution No. —, has caused this bond to be issued in the name of said county, as a bond of said local improvement district, the proceeds thereof to be applied in part payment of so much of the cost of the improvement of the rivers, lakes, canals or harbors of — county, under resolution No. —, as is to be borne by the owners of property in said local improvement district, and the said local improvement fund, district No. — of — county, has been established by resolution for said purpose; and the holder or holders of this bond shall look only to said fund for the payment of either the principal or interest of this bond.

"The call for the payment of this bond or any bond, issued on account of said improvement, may be made by the county treasurer by publishing the same in an official newspaper of the county for ten consecutive issues, beginning not more than twenty days before the expiration of any year from date hereof, and if such call be made, interest on this bond shall cease at the date named in such call.

"This bond is one of a series of — bonds, aggregating in all the principal sum of — dollars, issued for said local improvement district, all of which bonds are subject to the same terms and conditions as herein expressed.

"In witness whereof the said county of — has caused these presents to be signed by its chairman of its board of county commissioners, and countersigned by its county auditor and sealed with its corporate seal,

attested by its county clerk, this — day of —, in the year of our Lord one thousand nine hundred and —.

The county of —,

By —,

Chairman board of county commissioners.

Countersigned, — county auditor.

Attest, —, clerk."

There shall be attached to each bond such number of coupons, not exceeding twenty, as shall be required to represent the interest thereon, payable semi-annually, for the term of said bonds, which coupon shall be substantially in the following form:

"Number —.

\$ —.

"On the — day of — A. D. 19—, the county of —, Washington, promises to pay to the bearer at the office of its county treasurer — dollars, being one-half year's interest due that day on bond No. — of the bonds of 'local improvement district No. —,' the same being payable only from the fund of said district known as 'Local improvement fund, district No. — of — county,' and not otherwise: Provided, that this coupon is subject to all the terms and conditions contained in the bond to which it is annexed, and if said bond be called for payment before maturity hereof, then this coupon shall be void.

—, —,
"County auditor."

[L. '07, p. 588, § 10.]

§ 9679. [8158.] Execution and Registration of Bonds.

Each and every bond issued for any such improvement shall be signed by the chairman of the board of county commissioners and the county auditor, sealed with the corporate seal of the county, and attested by the county clerk. Each of such coupons shall bear the signature of the county auditor. The bonds issued for each local improvement district shall be in the aggregate for such an amount as authorized by the resolution of the board of county commissioners with reference to such river, lake, canal or harbor improvement, and each issue of such bonds shall be numbered consecutively, beginning with number 1. The county auditor shall keep in his office a register of all such bonds, in which he shall enter the local improvement district, for which the same are issued, and the number and total amount of each bond, and the term of payment. [L. '07, p. 591, § 11.]

§ 9680. [8159.] Removal of Lien of Assessment by Payment—Calls for Bonds—Bondholders' Rights.

The owner of any lot or parcel of land charged with any assessment as provided for hereinabove, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty (30) days after notice to him of such assessment, as herein provided, or may redeem the same at any time after the bonds above specified shall have been issued, by paying the full amount of all the principal and interest to the end of the

interest year then expiring, or next to expire. The county treasurer shall pay the interest on the bonds authorized to be issued under this act out of the respective local improvement funds from which they are payable, and whenever there shall be sufficient money in any local improvement fund, against which bonds have been issued under the provision of this act, over and above the amount necessary for the payment of interest on all unpaid bonds, and sufficient to pay the principal of one or more bonds, the county treasurer shall call in and pay such bonds, provided that such bonds shall be called in and paid in their numerical order: Provided, further, that such call shall be made by publication in the county official newspaper, on the day following the delinquency of the installment of the assessment, or as soon thereafter as practicable, and shall state that bonds numbers — (giving the serial number or numbers of the bonds called), will be paid on the day the proper interest coupon on said bonds shall become due, and interest upon such bonds shall cease upon such date. If the county shall fail, neglect or refuse to pay said bonds or promptly to collect any of said assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such bonds for any single improvement, may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [L. '07, p. 591, § 12.]

§ 9681. [8160.] Improvements by Adjoining Counties.

Two or more adjoining counties, in which are lands to be benefited by any such improvement as is hereinbefore mentioned, and as it will be partly or wholly within one or more of them, may jointly take advantage of the provisions of this chapter, and the procedure in such cases shall, as nearly as may be, conform to the procedure above prescribed, but with the modifications hereinafter expressed. [L. '07, p. 592, § 13.]

§ 9682. [8161.] Procedure.

In every case of such joint action, the preliminary procedure of section 9669 having been first had in each county severally, the board of county commissioners of the several counties proposing to join shall unite in such an application as is prescribed in section 9670, and the application shall be made to any person, who, for the time being, shall be a judge of the United States district court in any district in which such counties, or any of them, may lie, and the list mentioned in section 9670 shall be made in as many counterparts as there are counties so joining, and one counterpart shall be filed with the board of county commissioners of each county, and if the person who is such United States judge shall decline or be unable to act, then the board of such counties shall meet in joint session, at the county seat of such one of the counties as shall be agreed upon and shall organize as a joint board by appointing a chairman and clerk, and by resolution in which a majority

of all the commissioners present, and at least one commissioner from each county, shall concur, name the eleven persons for the commission, which eleven in such case shall be citizens of the counties concerned, and as nearly as may be the same number from each county. A counterpart of such resolution shall be recorded in the minutes of the proceedings of the board of each county. The commission shall make as many assessment-rolls as there are counties joining and one counterpart roll shall be certified by such chairman and clerk of the joint board, and by such clerk filed with the board of each of such counties. [L. '07, p. 593, § 14.]

§ 9683. [8162.] Joint Board of Equalization.

For purposes of a board of equalization, said boards shall from time to time meet as a joint board as aforesaid, and have a chairman and clerk as aforesaid, and for all purposes under sections 9673, 9674 of this chapter, in cases of counties joining, the word board wherever occurring in said sections shall be interpreted to mean such joint board, and the word clerk shall be deemed to mean the clerk of such joint board, and the posting of notices shall be in at least ten public places in each county, and the publication of the same shall be in a newspaper of each county, and the objections mentioned in said section 9674 shall be filed with the clerk of the joint board, who shall cause a copy thereof, certified by him to be filed with the clerk of the board of county commissioners of the county where the real estate of the party objecting is situated. [L. '07, p. 593, § 15.]

§ 9684. [8163.] Duplicates of Assessment-roll.

The minutes of the proceedings of the joint board and the assessment-roll as finally settled by such board shall be made up in as many counterparts as there are counties joining as aforesaid, and shall be signed by the chairman and clerk of said board, and one of said counterparts so signed shall be filed by said clerk with the clerk of the board of county commissioners of each of said counties, and any appeals and subsequent proceedings under sections 9675 to 9680, inclusive, of this chapter, as far as relates to real estate in any individual county, shall be as nearly as may be the same as if the local improvement district and bond issue concerned that county only. [L. '07, p. 594, § 16.]

§ 9685. [8164.] Expenses.

The joint board shall keep careful account of its necessary expenses and shall apportion and charge the same to the counties joining, and certify to the board of county commissioners of each such county an itemized statement of the entire account and of the proportionate part of such expense charged to such county and the board of county commissioners of such county shall cause the same to be paid out of the general fund of the county. [L. '07, p. 594, § 17.]

§ 9686. [8165.] Notification of Appointment of Commissioners.

The board of county commissioners of the county, or of the oldest county in case of counties joining, shall cause the persons named for the

commission to be notified of their appointment in a notice that shall name all such persons and shall designate the time and place of the first meeting of the commission. The commission, having come together pursuant to such notice, and its members having taken the oath hereinbefore prescribed, shall have full powers to organize and proceed with its business as a deliberative body. [L. '07, p. 594, § 18.]

§ 9687. [8165a.] Tax Levy for Expenses of Attempted Canal Improvement.

That whenever any county of the first class by and through its board of county commissioners shall have heretofore attempted to exercise the authority and power conferred by chapter 236 of the Laws of 1907, and said board of county commissioners shall have found that the government of the United States was intending or proposing the construction or operation of a canal improvement wholly within such county, and shall have upon a petition therefor signed by at least one hundred freeholders of said county who each owned realty within the limits of an improvement district sought to be created, adjudged that it was for the general benefit and welfare of the people of said county that such canal improvement be made and completed, and to order an assessment district within such county to be defined and established, and to levy an assessment upon so much of the taxable real estate of such county as should be specially benefited by such improvement for the purpose of paying a portion of the expenses of such improvement not exceeding one per cent of the taxable valuations of all real and personal property in the entire county as appeared on the then last assessment-roll, and shall have made application to the judge of the United States district court for the district within which said county was situated, to name eleven reputable citizens and freeholders of such county as a river and harbor improvement commission of such county and file a list thereof with said board of county commissioners, [and the list thereof with said board of county commissioners] and the judge of said United States district court shall have named said commissioners and filed a list thereof with said board of county commissioners, and the members of said river and harbor commission so named, before entering upon their duties shall have taken and subscribed an oath in compliance with the provisions of section 9670, and said river and harbor improvement commission shall have in good faith performed the duties prescribed in sections 9671 and 9672, and shall have in the performance of said duties and for the purpose of preparing an assessment-roll incurred expenses for services rendered, supplies and materials furnished and moneys advanced and issued certificates of indebtedness therefor redeemable and payable only from the local improvement fund to be raised by an assessment upon the pieces and parcels of real property in the assessment district created or to be created by said river and harbor improvement commission in said county, and said commission shall have created, defined and established the limits of an assessment district in said county and made an assessment-roll in which appeared the names of the owners of the property assessed, so far as

known, the description of each lot, block, parcel and tract of land within said assessment district and the amount assessed against the same, as separate, special and particular benefits, and certified such assessment-roll to the board of county commissioners of said county within the time allowed the said board, and said board of county commissioners shall have made an order setting a day for a hearing upon any objections to said assessment-roll and given notice of the time and place of said hearing as provided in section 9673, and shall have proceeded with said hearing, but for any cause shall have failed to equalize or fix said assessment and levy and collect the same, but the government of the United States has proceeded with construction of such canal improvement and said county has contributed to the cost of construction of said improvement, and said certificates of indebtedness shall not have been redeemed or paid but are still outstanding and the persons to whom the same were issued in good faith by said river and harbor improvement commission shall have received no compensation or payment for the services rendered, supplies and materials furnished or moneys advanced to said commission, and no local improvement fund has been raised by assessment upon the property in the assessment district created by said river and harbor improvement commission; the board of county commissioners of such county are hereby authorized and empowered to redeem said certificates of indebtedness and pay the same in the order of their issue, together with interest at the legal rate from the respective dates of issue thereof, out of the current expense fund, or out of the river improvement fund of such county, or to levy taxes upon all of the real estate within said district defined and established by said river and harbor improvement commission exclusive of improvements, sufficient to pay said outstanding certificates of indebtedness with interest as aforesaid and the cost of levying and collecting said taxes, and upon said levy or levies being made to cause the same to be extended upon the tax-rolls, certified and collected at the same time and in the same manner as other special district taxes, and when said tax shall have been collected, to redeem said certificates of indebtedness and to pay the same with interest as aforesaid out of the fund created by said tax, in the order of their issue. [L. '15. p, 233, § 1.]

CHAPTER VII.

PORT DISTRICTS.

§ 9688. [8165-1.] Port Districts Authorized.

Port districts for the acquirement, construction, maintenance, operation, development and regulation of a system of harbor improvements and rail and water transfer and terminal facilities within such districts, are hereby authorized to be established in the various counties of this state, as in this act provided. [L. '11, p. 412, § 1.]

Cited in 97 Wash. 556—558; 107 Wash. 608. of Seattle, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580.

This act is not unconstitutional as creating municipal corporations not recognized by the Constitution: *Paine v. Port-* A port district covering an entire county, is a municipal corporation having an independent existence with power to

incur indebtedness on its own account up to the constitutional limitation, and its creation is not an abuse of the power of the legislature in that it was created to avoid the constitutional limitation of indebtedness of the municipal corporations upon whose territory it was superimposed, where they were created for entirely different purposes, and its chief object was to provide public terminal facilities for both sea and land commerce, although the municipalities upon which it was superimposed had somewhat similar powers respecting the acquisition of such facilities: *Paine v. Port of Seattle*, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580.

This act is not void in its entirety from the mere fact that the port district may, in whole or in part, occupy the same territory as, and be superimposed upon another municipal corporation or corporations limited by the Constitution

in the amount of the expenditures that may be incurred for improvements of the same nature: *Paine v. Port of Seattle*, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580.

Under this act the Port of Seattle has no implied authority to spend money in a political campaign to defeat the passage of an act referred to the voters at a general election; since the district has only such power as is expressly conferred, or fairly incident to, and can be reasonably implied from the powers granted, and such delegation of power cannot be presumed: *State ex rel. Port of Seattle v. Superior Court*, 93 Wash. 267, 160 Pac. 755, L. R. A. 1917B, 354.

This section and section 9692 (prior to amendment) did not authorize a port district to operate a belt line railway as a public carrier: *State ex rel. Huggins v. Bridges*, 97 Wash. 553, 166 Pac. 780.

§ 9689. [8165-2.] Formation of District.

At any general election or at any special election which may be called for that purpose, the board of county commissioners of any county in this state may, or on petition of ten per cent of the qualified electors of such county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of such county the proposition of creating a port district which shall be coextensive with the limits of such county as now or hereafter established. Such petition shall be filed with the county auditor, who shall within fifteen (15) days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed port district. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen (15) days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners, who shall submit such proposition at the next general election or, if such petition so requests, the board of county commissioners shall, at their first meeting after the date of such certificate, by resolution, call a special election to be held not less than thirty (30) days nor more than sixty (60) days from the date of such certificate. The notice of election shall state the boundaries of the proposed port district and the object of such election. In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

“Port of —, Yes.” (giving the name of the principal seaport city within such proposed port district, or if there be more than one city of the same class within such district, such name as may be determined by the board of county commissioners).

“Port of —, No.” (giving the name of the principal seaport city within such port district, or if there be more than one city of the same class within such district, such name as may be determined by the board of county commissioners).

Any petition for the formation of a port district may describe a district of less area than the county in which such petition is filed, and in such event the county commissioners shall fix a date for hearing on such petition and publish a notice of such hearing for two weeks in a newspaper of general circulation in such county, after which hearing the county commissioners may increase or diminish the boundaries of such proposed port district and thereafter the same procedure shall be followed as is prescribed in this act for the formation of the larger port district, except that the petition and election shall be confined solely to the lesser port district: And provided, that whenever two or more petitions for the formation of a port district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser port district shall ever be created within the limits, in whole or in part, of any port district. [L. '11, p. 412, § 2; L. '13, p. 202, § 1.]

Cited in 93 Wash. 271.

§ 9690. [8165-3.] Powers of Commissioners.

Within five (5) days after such election the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the board of county commissioners shall so declare in its canvass of the returns of such election, and such port district shall then be and become a municipal corporation of the state of Washington and the name of such port district shall be “Port of —” (inserting the name appearing on the ballot). The powers of the port district shall be exercised through a port commission consisting of three members, one from each of the three county commissioner districts of the county in which the port district is located, when the port district is coextensive with the limits of such county. When the port district comprises only a portion of the county, three commissioner districts, numbered consecutively, having approximately equal population and boundaries following ward and precinct lines, shall be described in the petition for the formation of the port district, and one commissioner shall be elected from each of said commissioner districts. No person shall be eligible to hold the office of port commissioner unless he is a qualified voter, and freeholder within such port district, and is and has been a resident for a period of three (3) years, except as hereinafter provided, of the commissioner district from which he is elected.

Port commissioners shall hold office for a term of three (3) years and until their respective successors are elected and qualified, each term to commence on the second Monday in January following the election thereto. At the same election at which the proposition is submitted to the voters as to whether a port district shall be formed, three (3) commissioners shall be elected to hold office, respectively, for the term of one, two and three years. All candidates shall be voted upon by the entire port district, and the candidate residing in commissioner district number one receiving the highest number of votes in the port district shall hold office for the term of three (3) years; and the candidate residing in commissioner district number two receiving the highest number of votes in the port district shall hold office for the term of two (2) years, and the candidate residing in commissioner district number three receiving the highest number of votes in the port district shall hold office for the term of one (1) year, each of said terms to date from the second Monday in January following the election, but also to include the period intervening between the election and the second Monday in January following. All expenses of elections for the formation of such port districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the port district, if formed. Nominations for port commissioners at the first special election and at subsequent general elections shall be by petition of one hundred (100) qualified electors of the commissioner district in which the candidate is a resident, to be filed in the office of the county auditor at least twenty (20) days prior to such election: Provided, however, that there shall be no election held on the first Saturday in December immediately following the creation of such port district: And provided further, that in the event of a vacancy in the office of port commissioner by death, resignation or otherwise, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by a majority vote of the remaining port commissioners. In the event that such ad interim appointment shall not be made by the remaining commissioners within fifteen (15) days following the occurrence of the vacancy, the appointment shall be made by the judge of the superior court of the county, and if there is more than one such judge, by such judge who is oldest in years: Provided, that if there be more than three such judges, the appointment shall be made by the three persons holding such office who are the oldest in service therein (in determining seniority, the oldest in years being hereby designated where length of service is equal), and if any one or more of those herein designated shall be unable or shall decline to act, the three shall be made up from the one or more next in seniority of service who are able to act and do not decline. Of the three persons so designated, the appointment made in writing by any two shall be valid. If there should be at the same time such number of vacancies that there are not in office a majority of the full number of commissioners fixed by law, a special election shall be called to fill

the same, by the remainder, or, that failing, by the board of county commissioners of the county, such election to be held not more than forty (40) days after the occurring of such vacancies. A vacancy in the office of port commissioner shall occur by death, resignation, removal, conviction of a felony, nonattendance at meetings of the port commission for a period of sixty (60) days unless excused by the port commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty.

All the foregoing provisions of this section are subject to the following provisos: That in any port district which has a population of more than eighty thousand as shown by the last official census of the United States, the port commission shall, provided the proposition for a commission of five members is adopted at an election as hereinafter provided, consist of five members, one from each of the three commissioner districts of the port district as hereinbefore prescribed, and two commissioners at large elected from the port district without regard to residence in commissioner districts. The two commissioners at large must have been residents of the port district for three years and shall be nominated and elected at the same time and in the same manner as the other commissioners except that the petition for their nomination may be signed by qualified electors residing in any part of the port district, and on the petition for the nomination and on the ballot the names of the candidates shall be designated as commissioners at large. The question of the number of commissioners shall be submitted at the first general election after the organization of any port district having said population of more than eighty thousand, or, in the case of any port district already established and having said population, then at the general election in December, 1913, or at any prior election called for some other purpose. There shall be printed on the ballot the words "In favor of a port commission of five members," and the words "Against a port commission of five members," so that every voter shall be enabled to vote for or against the proposition of increasing the number of commissioners to five. If at such election a majority of the voters voting on said proposition, shall vote in favor of a port commission of five members, then said proposition shall be thereby adopted and from and after five days after such election, if it be a general election, otherwise from and after five days after the next general election, the port commission shall consist of five members by the addition of two commissioners at large as hereinbefore provided, but if said proposition shall fail to receive the approval of a majority of the voters voting thereon, the port commission shall continue to consist of three members only. If the proposition shall have carried at a special election, at the next general election, or if submitted at a general election, then at the same general election the names of candidates for commissioners at large shall be printed on the ballot and shall be voted on, but in the latter case the election of commissioners at large shall be contingent upon the adoption of the proposition for a port commission of five members. If such proposition shall have been or shall be adopted, the two candidates for commissioner at large who

receive the highest number of votes in the port district shall be elected, and of these two the candidate receiving the higher number of votes shall hold office for the term of three years, and the other shall hold office for the term of two years from the second Monday in January following, and in addition thereto both shall hold office for the period which begins five days after their election and extends to the commencement of the term on said second Monday in January. When the term of office of any commissioner at large shall be about to expire, his successor shall be elected at the general port district election next preceding the expiration of such term, and such successor shall hold office for the term of three years from the second Monday in January following. A majority of the persons holding the office of port commissioner at any time shall constitute a quorum of the port commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted unless there are in office at least a majority of the full number of commissioners fixed by law. [L. '11, p. 414, § 3; L. '13, p. 204, § 2.]

Cited in 97 Wash. 555, 558.

§ 9691. [8165-3½.] Elections.

A general election shall be held on the first Saturday in December of each year for the election of a port commissioner or commissioners and for the submission of propositions, and special elections shall be held at such times and for such purposes as the port commission may by resolution prescribe, subject to the limitations and pursuant to the requirements of this act. All elections shall be called and held as in this section provided except as in this act otherwise expressly provided. All notices of election shall be given by publishing the same for a period of ten days in a daily newspaper of general circulation published in said port district, or, if there is no daily newspaper published therein, then in at least two issues of a weekly newspaper published in said port district, such publication to be made within a period of twenty (20) days immediately preceding such election; and by posting, for at least ten (10) days prior to the date of election, a written or printed notice of such election in each polling place within such port district. The published notice shall give the time of holding the election, the hours the polls will remain open, the officer or officers to be elected, and a statement of the propositions to be submitted, and the posted notices shall, in addition, give the location of the polling places.

There shall be not less than one polling place in each of the various wards of any incorporated city within such port district, and one polling place within each precinct of each port district not within the limits of any incorporated city. It shall be the duty of the county commissioners in the formation of a port district, and of the port commission in all subsequent elections, to, at least twenty (20) days before each election, designate the polling places and appoint three election officers for each place of voting. At all elections the vote shall be by ballot.

The polls shall be open between such hours of the day as the commission shall designate, but in every case the polls shall be open between 1 o'clock P. M. and 8 o'clock P. M. All electors who are, at the time of such election, duly qualified to vote within their respective precincts under the general election laws for state and county officers shall be entitled to vote at any election held in such port district.

Officers of the city and county having charge of the registration books of any city or precinct in a port district shall deliver the same for the use of the election officers at all port elections. In the event of such registration books being required by law to be used by any school district or other public corporation at the same time as the use thereof will be necessary by the port district, such books shall be delivered to the port commission and school district or other public corporation jointly, and the same polling places and registration books may be used jointly in such cases, and the same individuals may serve as election officers for all such joint elections, and in such cases the compensation of such election officers and other expense shall be so divided that the port district shall bear only its proportionate share thereof.

The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act.

Immediately after the closing of the polls the election officers shall then and there, without removing the ballot-box from the place where the ballots were cast, proceed to count the votes, and as soon as such count is completed a return thereof shall be signed by such election officers and securely enveloped and sealed and delivered, together with the ballot-box containing the ballots, to the port commission, or some person delegated to receive the same on their behalf.

Within five days after the election, the port commission shall meet and proceed to canvass the returns of such election, and shall thereupon declare the result. [L. '13, p. 208, § 3.]

§ 9692. [8165-4.*] Powers of District.

All port districts organized under the provisions of this act shall be and are hereby authorized to acquire by purchase or condemnation, or both, all lands, property, property rights, leases or easements necessary for the purposes of the port districts, and to exercise the right of eminent domain in the acquirement or damaging of all land, property, property rights, leases or easements, and the levying and collection of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said district shall have been created, and such right shall be exercised in the same manner and by the same procedure as is or may be provided by law for cities of the first class, except in so far as such may be inconsistent with the provisions of this act, and the duties devolving upon the city treasurer under said law be and the same are hereby imposed upon the county treasurer for the

purposes of this act; to lay out, construct, condemn, purchase, acquire, add to, maintain, conduct and operate any and all systems of seawalls, jetties, piers, wharves, docks, boat landings, warehouses, storehouses, elevators, grain-bins, cold storage plants, terminal icing plants, bunkers, oil tanks, ferries, canals, locks, tidal basins, bridges, subways, tramways, cableways, conveyors, together with modern appliances for the economical handling, storing and transporting of freight and handling of passenger traffic, and other harbor improvements, rail and water transfer and terminal facilities within such port district; and in connection with the operation of the improvement of the port district to perform all customary services including the handling, weighing, measuring and reconditioning all commodities received; to apply to the proper authorities of the United States under any law now or which may hereafter be in force for the right to establish, operate and maintain foreign trade zones within the limits of the port district and to establish, operate and maintain such foreign trade zones: Provided, that where the money so raised is to be used exclusively for the purpose of acquiring land for sites and constructing warehouses, storage plants and other facilities to be constructed within the limits of such foreign trade zone for use in the operation and maintenance of such foreign trade zones, said port shall have the power to contract indebtedness or borrow money and issue general bonds therefor in an amount in addition to the three (3) per centum hereinafter fixed of two (2) per centum of the taxable property in such district to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, such additional indebtedness only to be incurred by the assent of three-fifths ($\frac{3}{5}$) of the voters of such port district voting thereon; to establish local improvement districts within such port districts, and to levy special assessments, under the mode of annual installments extending over a period not exceeding ten (10) years on all property specially benefited by any local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of any improvement ordered in such local improvement district; to issue local improvement bonds in any such local improvement district, to be repaid by the collection of local improvement assessments: Provided, that the levying and collection of all such assessments and issuance of bonds hereby authorized shall be in the manner now and hereafter provided by state law for the levying and collection of local improvement assessments and the issuance of local improvement bonds by cities of the first class, in so far as the same shall not be inconsistent with the provisions of this act: Provided, however, that the duties devolving upon the city treasurer under said laws be, and the same are hereby imposed upon the county treasurer for the purposes of this act; and to own and control lands, leases, and all easements in land necessary for the purposes of the port district; to improve navigable and non-navigable waters of the United States and the state of Washington within the port district; to create and improve for harbor purposes new waterways within the port district; to regulate and control all such waters and all natural or artificial waterways

- (waterways of commercial waterway districts excepted) within the limits of such port district so far and to the full extent that this state can grant the same, and remove obstructions therefrom; to straighten, widen, deepen and otherwise improve any and all waters, watercourses, bays, lakes or streams, whether navigable or otherwise, flowing through or located within the boundaries of such port district; to fix absolutely and without right of appeal or review the rates of wharfage, dockage, warehousing and port and terminal charges upon all improvements owned and operated directly by the port district itself and ferry charges of ferries operated by itself: Provided, however, that the port commission shall file with the public service commission of the state of Washington its schedule of rates and charges so fixed, as is required by the laws of the state of Washington of public service corporations, and may not change any rate or charge so filed without first filing a notice of such change of rate or charge with the public service commission not less than thirty days prior to the going into effect of such change of rate or charge, and to fix, subject to state regulation, rates of wharfage, dockage, warehousing, and all necessary port and terminal charges upon all docks, wharves, warehouses, quays, or piers owned by said port district but operated under lease from it; to execute leases of all lands, wharves, docks and property owned and controlled by said port district upon such terms as the port commission may deem proper: Provided, that no lease shall be executed for a period longer than thirty (30) years, and every such lease shall be secured by a bond, with surety satisfactory to the port commission, in a penalty not less than the rental for one-sixth of the term, but in no case less than the rental for one year where the term is one year or more, conditioned to carry out and perform the terms and conditions of such lease: Provided, that in any lease the term of which exceeds five (5) years, and when so stipulated in the lease (the insertion of such stipulation to be discretionary with the port commission) the port commission shall accept, with surety, satisfactory to the port commission, a bond conditioned to carry out and perform the terms and conditions of the lease for some part of the term, in no event less than five years (unless the remainder of the unexpired term is less than five years, in which case for the full remainder), and in every such case the port commission shall require of the lessee another or other like bond to be executed and delivered within two years, and not less than one year prior to the expiration of the period covered by the existing bond, covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term, so that there will always be in force a bond securing the performance of the terms and conditions of the lease, and the penalty in every such bond shall be not less than the rental for one-half the period covered thereby, but no such bond shall be construed to secure the furnishing of any other bond; to sell and convey any property in anywise acquired or owned by the port district whenever the port commission of such district shall have by resolution declared such property to be no longer needed for the purpose of the port district, but no prop-

erty which is a part of the comprehensive scheme or modification thereof, adopted by vote of the people, shall be sold or disposed of without the assent of a majority of the voters voting on the question of such proposed sale or disposition at a general or special election; to raise revenue by levy of an annual tax on all taxable property within such port district, the total levy for any one year for all purposes, except for the payment of the principal and interest of the general bonded indebtedness of the port not to exceed two mills on each dollar of the assessed valuation of the taxable property in such port district: Provided, that such levy shall be made and taxes collected in the manner now or hereafter provided by law for the levy and collection of taxes in school districts of the first class; to contract indebtedness or borrow money for port purposes and issue general bonds therefor not exceeding an amount, together with the existing indebtedness of such port district of three per centum of the assessed value of the taxable property in such district, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness: Provided, that no such indebtedness shall be incurred exceeding one per centum of the assessed value of such taxable property in such port district as shown by the last assessment for state and county purposes without three-fifths of the voters of such port district voting on the incurring of such indebtedness assenting thereto at a general or special election held in such port district for the purposes of such submission; to have the power to issue general bonds of any such district evidencing any indebtedness thereof payable at any time not exceeding fifty (50) years from the date of such bonds. [L. '21, p. 740, § 1; L. '17, p. 498, § 1; L. '11, p. 418, § 4; L. '13, p. 210, § 4.]

Cited in 87 Wash. 261, 262; 93 Wash. 271; 97 Wash. 557, 558.

The establishment of an ice manufacturing and general cold-storage plant for the icing and preparation of fish for shipment, as a necessary incident to its warehousing and transmission, is within the power of the Seattle port commission, under this section, authorizing the commission "to construct and operate any and all systems of wharves, docks . . . and other harbor improvements, rail and water transfer and terminal facili-

ties . . . "; State ex rel. Hill v. Bridges, 87 Wash. 260, 151 Pac. 490.

Under this section, originally, the port had no authority to expend money in a political campaign to defeat the passage of an act referred to the people: State ex rel. Port of Seattle v. Superior Court, 93 Wash. 267, 160 Pac. 755. Nor to construct a belt line railway to be operated as a common carrier: State ex rel. Huggins v. Bridges, 97 Wash. 553, 166 Pac. 780.

§ 9693. [8165-5.*] Port Commissioners—Organization—Contracts.

All port commissioners shall serve without compensation save and except in port districts having a population of two hundred thousand (200,000) or more inhabitants, and in such port districts each commissioner shall receive a compensation of three thousand dollars (\$3,000) per annum, said compensation to be paid monthly out of the funds of the port district, in the same manner as are the salaries of the employees of the port district, the population of a port district to be fixed and determined by the last official census of the United States for the purposes of this section. The foregoing provision relating to compensation of port

commissioners is subject to the following proviso: The question of whether port commissioners in port districts having a population of two hundred thousand (200,000) or more inhabitants shall receive compensation as herein provided shall be submitted at the first general election after the organization of any port district having said population of two hundred thousand (200,000) or more inhabitants, or in the case of any port district already established and having said population then at a special election of the said port district at the time of the next general county election in the county in which said port district is located, held after the taking effect of this act. There shall be printed on the ballot at such election the words "In favor of compensation for port commissioners in the sum of three thousand dollars (\$3,000) each per annum," and the words "Against compensation for port commissioners in the sum of three thousand dollars (\$3,000) per annum." If at such election the majority of the voters voting on said proposition shall vote in favor of such compensation, the port commissioners of such port district shall receive compensation in the sum of three thousand dollars (\$3,000) per annum as provided herein and in any case where a port district with a population of two hundred thousand (200,000) or more inhabitants is in existence at the time this act becomes effective and such port district votes for a compensation as hereinbefore provided, the port commissioners of such district elected and serving shall begin to receive compensation with the calendar month succeeding the month in which the vote is taken. But if such proposition shall fail to receive the approval of the majority of those voting therein, compensation shall not be paid unless the same be favorably voted upon in the manner provided herein at some succeeding election: Provided, however, that the question of compensation of port commissioners may not be submitted at more frequent intervals than periods of four years. The port commission shall organize by the election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. The county treasurer of the county in which such port district is situated shall be the treasurer of the port district, and all funds of the port district shall be paid to him as such port treasurer and shall only be disbursed by him on warrants drawn and signed by a port auditor to be appointed by the port commission, upon order of or vouchers approved by the port commission. The port commission shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide. All materials required by the port district may be purchased in the open market or by contract, and all work ordered may be let by contract or done by day labor as the port commission may determine. Before awarding any contract the port commission shall cause to be published in some newspaper within the district a notice for at least ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications for which must at the time of publication of such notice

be on file in the office of the port commission subject to public inspection: Provided, however, that port commission may at the same time and as part of the same notice, invite tenders for such work or material upon plans and specifications to be submitted by the bidder. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the commission on or before the day and hour named. Each bid shall be accompanied by a certified check payable to the order of the port commission for a sum not less than five per cent of the amount of the bid, and no bid shall be considered unless accompanied by such check. At the time and place named such bids shall be publicly opened and read and the commission shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications. If, in the opinion of the commission all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all checks shall be returned to the bidders; but if such contract be let, then in such case all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond given to the port district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commissioners, in an amount to be fixed by the commission, but not in any event less than twenty-five (25) per cent of the contract price. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check and the amount thereof shall be forfeited to the port district. [L. '21, p. 706, § 1; L. '17, p. 502, § 2; L. '11, p. 420, § 5; L. '13, p. 214, § 5.]

The amendment of 1917, granting compensation to port commissioners serving without compensation, was inapplicable to commissioners theretofore elected: State ex rel. Port of Seattle v. Wardall, 107 Wash. 606, 183 Pac. 67.

§ 9694. [8165-6.] Adoption of Harbor Improvement Plans.

It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in such port district, after a public hearing thereon, of which at least ten days' notice shall be published in a daily newspaper of general circulation in such port district, and no expenditure for the carrying on of any harbor improvements shall be made by said port commission other than the necessary salaries, including engineers, clerical and office expense of such port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of harbor improvements in such port district, unless and until such comprehensive scheme of harbor improvement has been so officially adopted by the port commission and ratified by a majority vote of the people of such port district voting

thereon in favor thereof at an election which shall be held for such purpose. [L. '11, p. 422, § 6; L. '13, p. 215, § 6.]

§ 9695. [8165-7.] Improvement to Follow Plans Adopted.

When such general plans shall have been adopted or approved, as aforesaid, every improvement to be made by said commission shall be made substantially in accordance therewith unless and until such general plans shall have been changed by a majority vote of the qualified electors of the port district voting thereon at an election held for such purpose. [L. '11, p. 423, § 7; L. '13, p. 216, § 7.]

§ 9696. [8165-8.] Improvements—Ownership of.

No improvements shall be acquired or constructed, by the port district, unless such improvements shall, when completed, be the property of such port district, the county in which such port district is located, any commercial waterway district created within its boundaries, any city within such port district, the state of Washington or the United States of America, and the funds of such port district may be expended in the acquirement or construction of any harbor improvement embraced in such general plan adopted as in this act provided in conjunction with the county in which such port district is located, any commercial waterway district created within its boundaries, any city in such port district, the state of Washington or the United States of America, or all or any of them. [L. '11, p. 423, § 8; L. '13, p. 216, § 8.]

§ 9697. [8165-10.] Local Improvements upon Majority Petition.

Whenever a petition signed by one hundred (100) freeholders in the district to be therein described, shall be filed with the port commission, asking that any portion of the general plan adopted be ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, it shall be the duty of the port commission to fix a date for hearing on such petition, after which it may alter the boundaries of such proposed district and prepare and adopt detail plans of any such local improvement, declare the estimated cost thereof, what proportion of such cost shall be borne by such proposed local improvement district, and what proportion of the cost if any, but in any event not to exceed fifty per cent, shall be borne by the entire port district. At any time within two years thereafter, upon petition of the owners of a majority of the lands in such proposed local improvement district, fixed by the port commission, as shown in the office of the auditor of such county, asking that such improvement be ordered, the port commission shall forthwith by resolution order such improvement, provide the general funds of the port district to be applied thereto, acquire all lands necessary therefor, pay all damages caused thereby, and commence in the name of the port district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle said port district to proceed with such work, and shall thereafter proceed with such work,

and shall make and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within such local improvement district in proportion to the special benefits to be derived by the property in such local improvement district from such improvement. Before the approval of such roll a notice shall be published ten (10) days in one or more daily newspapers of general circulation in such local improvement district, stating that such roll is on file and open to inspection in the office of the clerk of the port commission, and fixing a time not less than fifteen (15) nor more than thirty (30) days from the date of the first publication of such notice within which protests must be filed with the clerk of said port commission against any assessments shown thereon, and fixing a time when a hearing shall be held by said commission on said protests. After such hearing the port commission may alter any and all assessments shown on such roll and may then by resolution approve the same, but in the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the port commission. Any person feeling aggrieved by any such assessments shall perfect an appeal to the superior court of such county within ten (10) days after such approval in the manner now provided by law for appeals from assessments levied by cities of the first class in this state. Engineering and office expenses in all cases shall be borne by the general district. [L. '11, p. 424, § 10.]

§ 9698. [8165-11.] Fifty Per Cent of Cost Paid from General Fund.

Whenever any improvement shall be ordered, payment for which shall be made in part from assessments against property specially benefited, not more than fifty (50) per cent of the cost thereof shall ever be borne by the entire port district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed such amount, unless a majority vote of the electors of the port district shall consent to or ratify the making of such expenditure. [L. '11, p. 425, § 11.]

§ 9699. [8165-12.*] Funds in Anticipation of Revenues.

Any port commission is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district and such warrants shall be redeemed from the first money available from such taxes when collected. [L. '21, p. 709, § 2; L. '11, p. 426, § 12.]

§ 9700. [8165-13.*] County Treasurer—Funds.

The county treasurer acting as port treasurer shall create a fund to be known as the "Port of —, Fund," into which shall be paid all money received by him from the collection of taxes in behalf of such port district, and shall also maintain such other special funds as may be created by the port commission into which shall be placed such moneys as the port commission may by its resolution direct. All such port funds

shall be deposited with the county depositories under the same restrictions, contracts and security as is provided by statute for county depositories and all interest collected on such port funds shall belong to such port district and shall be deposited to its credit in the proper port funds. [L. '21, p. 709, § 3; L. '11, p. 426, § 13.]

§ 9701. [8165-14.] Act Cumulative.

This act shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control in this state, but shall be held to be an additional and concurrent method providing for such purpose. [L. '11, p. 426, § 14.]

§ 9702. District Comprising Less Than County—Election.

When it is desired to create a port district comprising territory less than the entire county in other than class A counties, the county commissioners shall, upon petition of ten per cent or more of the electors residing within the proposed boundaries of such proposed district based on the total vote at the last general election within such area, submit to the qualified electors residing within such proposed district the proposition of creating such port district. If at any such election a majority of the votes cast thereon shall be in favor of establishing such port district and the total vote cast upon such question shall equal one-third of the total vote cast at the last preceding general election within such area, such port district shall be established. [L. '21, p. 138, § 1.]

§ 9703. Nominations for Port Commissioners, Less Than Fifteen Hundred Inhabitants.

Nominations for port commissioners in any port district having a population less than fifteen hundred may be made by petition signed by a number of qualified voters equaling ten per cent or more of the qualified voters residing within the area of said port district. [L. '21, p. 138, § 2.]

§ 9704. Notice When No Newspaper in District.

Notices required in port districts in which no newspaper is published may be given by publication in any newspaper of general circulation in the county. [L. '21, p. 139, § 3.]

§ 9705. Gifts.

Port commissioners of any port district are hereby authorized to accept for and on behalf of said port district gifts of real and personal property and to expend in improvements and betterment such amount as may be necessary. [L. '21, p. 139, § 4.]

§ 9706. Validity of Formation of District.

In every case where the county commissioners of any county in other than class A counties, after having first submitted the proposition of creating a port district to the voters within any proposed area, have

thereafter, upon a favorable vote on said proposition, by order, act, or resolution created or formed, or attempted to create or form, a port district, such port district so created or formed, or attempted to be created or formed, is hereby declared to be a valid port district, fully clothed with all the power and authority vested by law in port districts, and all proceedings in connection with the formation of any such port district are hereby fully validated, notwithstanding any irregularities or omissions in the procedure by which any such district was formed. [L. '21, p. 139, § 5.]

§ 9707. Election on Enlargement of District.

At any general election or at any special election which may be called for that purpose, the board of county commissioners of any county in this state, in which there exists a port district which is not coextensive with the limits of the county, shall, on petition of the commissioners of such port district, by resolution, submit to the voters of such county, or to the voters residing within the limits of the enlarged port district, including the voters residing within the limits of the existing port district, described in such petition, the proposition of enlarging the limits of such port district so as to include therein the whole of the territory embraced within the boundaries of such county, or such territory as may be described in said petition by legal subdivisions. Such petition shall be filed with the county auditor, who shall forthwith transmit the same to the board of county commissioners, who shall submit such proposition at the next general election, or, if such petition so request, the board of county commissioners shall, at their first meeting after the date of filing such petition, by resolution, call a special election to be held not less than thirty days nor more than sixty days from the date of filing said petition. The notice of election shall state the boundaries of the proposed enlargement port district and the object of the special election. In submitting said question to the voters for their approval or rejection, the proposition shall be expressed on the ballots substantially in the following terms:

“Enlargement of the port of —, yes.” (Giving the name of the port district which it is proposed to enlarge);

“Enlargement of the port of —, no.” (Giving the name of the port district which it is proposed to enlarge).

Such election, whether general or special, shall be held in each precinct wholly or partially embraced within the limits of the proposed enlarged port district and shall be conducted and the votes cast thereat counted, canvassed, and the returns thereof made in the manner provided by law for holding general or special county elections. [L. '21, p. 485, § 1.]

§ 9708. Order Establishing—Assessment for Outstanding Bonds.

If a majority of all the votes cast at any such election upon the proposition of enlarging such port district shall be for the “Enlargement of the port of —, yes” then and in that event the board of county com-

missioners shall enter an order declaring such port district enlarged so as to embrace within the limits thereof the territory described in the petition for such election, and thereupon the boundaries of said port district shall be so enlarged and the commissioners thereof shall have jurisdiction over the whole of said district as enlarged to the same extent, and with like power and authority, as though the additional territory had been originally embraced within the boundaries of the existing port district: Provided, however, that none of the lands or property embraced within the territory added to and incorporated within such port district shall be liable to assessment for the payment of any outstanding bonds, warrants or other indebtedness of such original port district, but such outstanding bonds, warrants or other indebtedness together with interest thereon; shall be paid exclusively from assessments levied and collected on the lands and property embraced within the boundaries of the pre-existing port district. [L. '21, p. 486, § 2.]

§ 9709. [8165-15.] Port Districts of First Class Defined.

Every port district heretofore or hereafter formed which is or shall be coextensive with the limits of a county of the first class, as defined in section 4200, shall be known and designated as a port district of the first class. This section and the following sections to section 9717 inclusive, shall relate exclusively to port districts of the first class, and all port districts of the first class shall hereafter be governed by the provisions of said sections: Provided, that the preceding sections of the act to which this act is amendatory shall apply to port districts of the first class except as otherwise provided in this and the following sections. [L. '15, p. 148, § 1.]

Cited in 93 Wash. 267, 268.

The Seattle port commission had no power to spend money in a political cam-

paign to defeat the passage of this act: State ex rel. Port of Seattle v. Superior Court, 93 Wash. 267, 160 Pac. 755.

§ 9710. [8165-16.] Board of Commissioners—Constitution.

The port districts of the first class, as herein defined, shall be governed by a board of seven (7) commissioners to be known and designated as "Board of Port Commissioners of the port of ——" (inserting name of principal seaport city within said district). The said board herein provided for shall consist of the following officers, namely: three elective commissioners, elected by the electors of the port district, in the manner hereinafter provided, and having the qualifications hereinafter mentioned, to serve for a period of six (6) years, except as hereinafter provided, and until their successors are elected and have qualified; in addition to the said three elective commissioners, the said board shall consist of the following officers ex officio, namely, the county auditor, the county engineer, and the prosecuting attorney of the county whose limits are coextensive with that of the port district, and the mayor of the principal seaport city having the largest population within such port district: Provided, that if under the charter of such city there shall not be an officer performing the duties of mayor, or such officer being lacking, then the legislative body of such city shall appoint from among its own members or from the other officers of the city, a member of such board to supply the place

of such officer so lacking, and any such appointment shall hold good as to such member of the board of commissioners until the expiration of the term of his then city office.

The qualifications for elective port commissioners in port districts of the first class, as herein defined, and the method and manner of their nomination and election shall be the same as now provided for port commissioners, all as near as may be, in section 9690, excepting the term of office of said commissioners shall be six (6) years, and excepting the said election of port commissioners shall be held at the same time and places as the general election in each even numbered year. All elective commissioners contemplated by this amendatory act shall qualify on the same day as county officers qualify.

In the case of any port district already formed, which is a port district of the first class, as herein defined, and having three commissioners under existing law, the said commissioners so elected shall be the three elective commissioners contemplated by this amendatory act: Provided, that the said commissioners shall serve and hold office until their successors are elected and have qualified: And provided further, that the commissioners whose terms expire on the second Monday of January, 1916, and the second Monday of January, 1917, respectively, shall be elected at the general election held in 1916, the one receiving the highest number of votes to serve for a term of six (6) years, and the one receiving the next highest to serve four (4) years. Vacancies in the office of any elective port commissioner shall be filled until the next general election, by appointment by a majority vote of the remaining port commissioners composing the board. [L. '15, p. 149, § 2.]

§ 9711. [8165-17.] Limitation on Indebtedness—Validation.

The total bonded indebtedness of any port district of the first class shall not exceed two and one-fourth per centum ($2\frac{1}{4}\%$) of the assessed valuation of the taxable property in said district, but in no event shall the said total bonded indebtedness ever exceed the sum of five million, seven hundred fifty thousand dollars (\$5,750,000); and whenever said limit shall have been reached, no other or further bond or bonds shall be issued, sold, delivered or hypothecated, whether or not the same may have been authorized by any law heretofore enacted and notwithstanding that the steps and proceedings relating to the authorization thereof may have been completed in accordance with the requirements of such law: Provided, that all existing lawful obligations of any port district, whether consisting of bonds or other forms of indebtedness, are hereby recognized as such, notwithstanding the fact that they may, either by themselves or in connection with other obligations, exceed the limit herein fixed, and the same shall continue to be valid obligations of such port district. The board of port commissioners shall continue to have and to exercise all of the powers and duties conferred or imposed upon said board by this amendatory act, or conferred or imposed upon the port commission by the act of which this act is amendatory, so far as necessary to pay, refund or renew any existing obligation and to carry out and perform any existing contract, so as to fully protect the rights of all persons holding any obligation or having any contract created by such

port district, though it be found to exceed the limit hereby established. [L. '15, p. 150, § 3.]

§ 9712. [8165-18.] Official Seal—Officers of Commission—Quorum.

The members of the board of port commissioners of each port district of the first class shall serve as such ex officio without extra compensation. Such board shall adopt an official seal and shall organize by the election of one of its members as president. The county auditor shall be ex officio secretary and auditor of the board of port commissioners without extra compensation. The county engineer shall be ex officio engineer of such port district, and shall have charge and supervision over the engineering department of such port district without extra compensation: Provided, that such engineer shall at all times be subject to the authority and control of the board of port commissioners: And provided further, that all engineering expenses incurred in behalf of the port district shall be the obligations of such port district and be paid from its funds, the same as other expenses thereof. The prosecuting attorney of the county shall be ex officio the attorney for such port district without extra compensation: Provided, that all legal expenses incurred in behalf of the port district shall be the obligations of the port district and be paid from its fund, same as other expenses thereof. Five members of the board of port commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of any four members duly assembled in meeting shall be required and shall be sufficient for the passage of any resolution. All proceedings of the board of port commissioners shall be by resolution, recorded in a book or books kept for such purpose, which shall constitute public records. [L. '15, p. 151, § 4.]

§ 9713. [8165-19.] Offices of—Commission.

The board of port commissioners of any port district of the first class shall apply to the board of county commissioners for space in the county courthouse for the executive offices of the board of port commissioners, and it shall be the duty of the county commissioners to provide such space if practicable, and the expense thereof is hereby declared to be for a county purpose. Only in case of inability to procure such space in the courthouse or in some of the buildings owned by the port district shall private office be rented by the board of port commissioners, in which event the expense of such rental shall be paid from the funds of the port district. [L. '15, p. 152, § 5.]

§ 9714. [8165-20.] Sinking Funds.

Each board of port commissioners shall provide such sinking fund or sinking funds as shall be necessary to give effect to the provisions of this act. All moneys received in excess of fixed charges, interest on bonded indebtedness, operating expenses, sums, if necessary, to complete any unfinished work or facility, or to carry out any unfinished contract, or to protect the rights of any person or corporation acquiring such rights from such port district, or the port commission, or board of port commissioners thereof, and all renewals and repairs, shall be placed in the

proper sinking fund for the purpose of retiring outstanding bonds at maturity. [L. '15, p. 152, § 6.]

§ 9715. [8165-21.] Powers and Duties of Board.

Any and every board of port commissioners is hereby vested with full power and authority to do any and all things necessary to preserve any of the property, title to which has been vested in such port district, to maintain the same in good and safe operating condition and to operate any facility and otherwise to exercise the powers and perform the duties which in other port districts are exercised and performed by port commissioners except as otherwise provided in this amendatory act. [L. '15, p. 153, § 7.]

§ 9716. [8165-22.] Sale of Property—Appraisement—Proceedings.

Any and every board of port commissioners is hereby authorized and empowered to sell and convey any property in any way acquired or owned by such port district whenever the board of port commissioners shall have by resolution declared it advisable that such property be sold: Provided, that before any such sale shall be made of any real property, or interest, or right therein, or any building, wharf or structure, the property to be sold, whether it be any part or all of the property acquired by such port district, shall have been appraised by three competent appraisers of whom the county assessor shall be one, and the other two shall have been appointed by resolution of the board of port commissioners: And provided further, that a majority of the electors of the port district voting on the question of such sale or disposition at a general or special election shall have assented thereto: And provided further, that the appraised value of such property, as fixed by the appraisal aforesaid, shall be stated on the ballot, and no sale shall be made at less than such appraised value: And provided further, that any and all sales to be made under the provisions of this act shall be had at public auction at the front door of the courthouse of the county which is coextensive with the limits of such port district, of which sale notice shall have been published in the official newspaper of such county once a week for four successive weeks immediately prior to such sale. No sale shall be made based on any appraisement made within six months from the time of a previous appraisement unless such new appraisement be equal to or in excess of such previous appraisement. The board of port commissioners is hereby vested with full power and authority to lease any property or any part thereof, acquired by any such port district, to any person or corporation upon such terms and for such time as in the judgment of the board shall be deemed for the best interests of the port district: Provided, that all existing rights of persons or corporations acquiring the same from any such port district or the port commission thereof shall be fully protected: And provided further, that any lease for a longer term than five years shall have first been approved by a majority of the electors of the port district voting at a general or special election, after notice published as prescribed by this section. The board of port commissioners is also hereby vested with full power and authority, if deemed necessary and expedient by such board, to operate any and all property

or facilities in any way acquired or owned by any such port district. [L. '15, p. 153, § 8.]

§ 9717. [8165-23.] Partial Invalidity.

If any part of this act shall be adjudged to be invalid such adjudication of invalidity shall not affect the validity of this act as a whole, or any part thereof. [L. '15, p. 154, § 9.]

§ 9718. [8165-24.] Date of Taking Effect.

This act shall take effect and be in force on the first day of July, 1915. [L. '15, p. 155, § 10.]

CHAPTER VIII.

LEASE OF HARBOR AREAS ON FRESH WATERS WITHIN PORT DISTRICTS.

§ 9719. Authority of Port Commission to Lease—Rental Payable to State Treasurer.

The port commission of each port district heretofore created or hereafter to be created under the laws of the state of Washington, shall have full power and authority in the manner hereinafter provided to lease the harbor areas belonging to the state of Washington, on fresh waters situate within such port district to such persons and upon such terms and conditions, as shall conform to the provisions of the Constitution of the state of Washington and the provisions of this act. Every such lease shall provide that the rental thereunder shall be payable to the state treasurer. [L. '17, p. 333, § 1.]

§ 9720. Preference Right of Abutting Owner—Application by Other Persons—Notice—Lease to Highest Bidder—Improvements—Rent.

The owner or owners of any shore land bordering upon any such harbor area, shall have a preference right for the period of time hereinafter mentioned, to lease such harbor area, at an annual rental hereinafter specified. The owner or owners of any such shore lands shall have the exclusive right for a period of six months following the filing of the plat of any such harbor area hereafter to be filed covering harbor area within the limits of any port district, or in case of such plats heretofore filed, then within six months following the taking effect of this act, to file with said port commission a written application for the leasing of such harbor area and to thereafter obtain a lease of such harbor area for a period of thirty (30) years. If such exclusive preference right shall not be exercised by said shore owner within the time aforesaid, then any qualified person, firm or corporation may apply in writing to said port commission for the right to lease said harbor area; and upon filing of such application, the said port commission shall forthwith notify the owner of the abutting shore land of the pendency of said application and said owner shall be allowed sixty (60) days from the date of the service of said notice within which to exercise a preference right to lease said harbor area for a period of thirty (30) years. If said owner be an actual resident of this state, notice shall be served upon him or it personally, but if he be not a resident of this state, said notice shall be sent to him by registered mail

to his or its last known address; and if the address of said nonresident be not known to said port commission, no notice shall be required. In case the abutting shore land owner shall not exercise the right to lease within said six (6) months period, then the port commission, whenever it shall deem it advisable, may offer for lease any part of such harbor area and shall give sixty (60) days notice by publication that a lease of such part of such harbor area will be sold, at a time and place to be specified in said notice, to the person, association or corporation offering at such public sale to pay the highest sum as a cash bonus for such lease; and in such case the port commission shall serve notice of such intended sale upon the abutting shore land owner for sixty (60) days, as above set forth, during which time said shore land owner shall have the right to exercise said preference rights to lease on the terms aforesaid. If the abutting owner shall not have exercised his or its preference right to lease prior to the time of sale, such lease shall be sold and made and delivered accordingly, the payment of the sum offered by the successful bidder being required at the time of such sale. Every lease obtained by virtue of the exercise of any such exclusive or preference right shall conform to the provisions of the state Constitution and shall provide that the harbor area described therein or such a reasonable portion thereof as shall be designated by the port commission of such port district, having in view the requirements of the business proposed to be carried on thereon, shall be improved upon plans approved by such commission, the construction of such improvement to be commenced within such time as may be fixed in each case by such port commission, such time to be in no case less than two years from the date of such leases and to be completed within such reasonable time thereafter as such port commission shall fix in each case, any of which time so fixed may be thereafter extended by such commission, the character of which improvements may, with approval of the port commission, be changed either before or after completion but in all cases where the abutting owner or owners claiming under him, had prior to February 22, 1913, built upon such area, such improvements shall, so far as otherwise conforming to the provisions of the state Constitution be recognized and accepted as a sufficient compliance with the requirements of this act, so far as concerns the area covered thereby, and as to uncovered area such improvements shall be given the same consideration as any other case, and every lease obtained by virtue of any such exclusive or preference right shall further provide that the annual rental to be paid shall be a sum equal to two (2) per cent of the assessed valuation for the year preceding the date of such lease of an equal area of adjoining or abutting shore lands exclusive of improvements thereon, and where the adjoining or abutting strip of shore lands is of less width than the harbor area, a value proportional to such width: Provided further, however, that the foregoing provision fixing the rate of rental shall not extend beyond December 21, 1928, but all rentals after that date shall be subject to be controlled and fixed in the manner and by the public authority or authorities then provided by law for the same. [L. '17, p. 333, § 2.]

§ 9721. Bond to Secure Rental—Cancellation of Lease.

The port commission shall require of every lessee under this act a bond with sufficient surety, to be approved by the port commission, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars (\$500), as may be prescribed by the port commission, conditioned for the payment by the lessee of the rental reserved in his lease at or prior to the time of payment therein specified, during the term of such lease or during such part thereof as the port commission in its discretion shall require to be covered by such bond; and in case only a part of the term of such lease shall be covered thereby, said port commission shall require of such lessee another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the lease, or such part thereof as the port commission in its discretion shall require to be covered thereby. The port commission shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if it shall find the same to be insufficient it shall require the lessee to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the lease; and the port commission shall have power upon sixty (60) days' notice to cancel any lease for a substantial breach by the lessee of any of the conditions thereof, or for lack of a bond therewith as herein required. Notwithstanding any such lease now or hereafter existing the state shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage or other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased land may be used, and the right to prevent extortion and discrimination in such use thereof. [L. '17, p. 335, § 3.]

§ 9722. Preference Right on Cancellation of Lease.

The lessee under any lease now existing of harbor area on fresh water situate in a port district, which shall be canceled or annulled for any reason, shall, upon such cancellation or annulment, have, for ninety (90) days thereafter, a preference right to a new lease, for the remainder of the term of the lease canceled or annulled, upon the terms and conditions provided in sections 9720 and 9721; but in all cases where any canceled or annulled lease contained provisions relating to the right of the state to annul or cancel the same, like provision shall be incorporated in any new lease covering in whole or in part of the same area. [L. '17, p. 336, § 4.]

§ 9723. Act of Leasing not to Work any Estoppel.

The application for or the making or acceptance of any lease authorized by this act shall not work any estoppel against either party thereto or against those in privity with either party as to any claim or right which might otherwise be made or contested. [L. '17, p. 337, § 5.]

CHAPTER IX.

COMMERCIAL WATERWAYS.

§ 9724. [8166a.] Organization—Powers and Duties of Commissioners.

Any county or portions of a county requiring commercial waterways may be organized into a commercial waterway district, and when so organized such district, and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred, or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as commercial waterway district No. — of the county of —, the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal.

The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such commercial waterway district, have the power, and it shall be their duty to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [L. '11, p. 12, § 1. Cf. L. '09, Ex. Sess., p. 8, § 1.]

Cited in 76 Wash. 185; 77 Wash. 187; 80 Wash. 281; 82 Wash. 34; 86 Wash. 227.

Constitutionality and Construction of Acts: See Remington's Digest, Nav. Wat., § 2-1; State ex rel. Bussell v. Abraham, 61 Wash. 601, 112 Pac. 671; State ex rel. Bussell v. Abraham, 64 Wash. 621, 117

Pac. 501; Chlopeck Fish Co. v. Seattle, 64 Wash. 315, 117 Pac. 232; State ex rel. Puget Mill Co. v. Superior Court, 68 Wash. 425, 123 Pac. 791; Merrifield v. Commercial Waterway Dist. No. 1, 80 Wash. 279, 141 Pac. 685.

§ 9725. [8167a.] Petition, Contents and Requisites of—Cost Bond.

For the purpose of the formation of such waterway district a petition shall be presented to and filed with the board of county commissioners of the county in which said proposed commercial waterway district is located, which petition shall set forth the object for the creation of said district; shall designate the boundaries thereof and set forth therein the area of land to be benefited by the proposed commercial waterway system, and shall also contain the names of all freeholders residing within said proposed district, so far as known, and shall contain a brief description of the proposed system of waterways, route over which the same is to be constructed, together with the proposed spurs or branches, if any there may be, and the termini thereof, and set forth the further fact that the establishment of said district and the proposed system of commercial waterways will be of special benefit to the property included therein, and will be conducive to the public health and sanitation and increase the public revenue. Said petition shall be signed by the owners of at least a majority of the area of land in the proposed district, or by their agents, and shall pray that the same may be organized under the provisions of this act. Said petitioners shall at the time of the filing of said petition file a bond with such county commissioners, running to the

state of Washington, in the penal sum of five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned that they will pay all costs, in case said district, for any reason, shall not be established. [L. '11, p. 12, § 2. Cf. L. '09, Ex. Sess., p. 9, § 2.]

Cited in 80 Wash. 281.

§ 9726. [8168a.] Hearing, Notice of—Objections—Extension of Boundaries.

Said petition shall be heard at a regular or special meeting of the board of county commissioners of said county, and said board of county commissioners shall give notice of said hearing by publishing such notice for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in said county, then in some such newspaper of general circulation therein, before the time at which the same is to be heard. Said notice shall give a general description of the nature of the improvement petitioned for, the boundaries and approximate area of the proposed district, the number of freeholders residing therein, so far as known, as shown by said petition, the number of petitioners on said petition, together with the total estimated amount of acreage represented to be owned by said petitioners. Said notice shall further state that said petition is on file at the office of the said county commissioners, where the same may be examined or inspected by any person interested in said proposed district. When such petition is presented for hearing, the board of county commissioners shall hear the same, or may adjourn said hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon a final hearing said board of county commissioners shall make such changes in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the area of land that will be benefited by said proposed system of commercial waterways, and shall find whether the proposed commercial waterways will be conducive to the public health, sanitation, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the land included within said boundaries of said proposed district so established by said board of county commissioners: Provided, that no changes shall be made by said board of county commissioners in said boundary lines so as to include territory outside of the boundaries described in said petition: Provided further, that any person or corporation owning lands within the proposed boundaries and who did not sign said petition, or any person, or corporation owning land not included within the proposed boundaries may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein; setting forth in said petition the reason therefor, but no person, persons or corporations not owning land included within the boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: Provided, any

corporation owning land within the boundaries described in the original petition may also petition the board of county commissioners for an extension of the proposed boundaries: Provided further, that the boundaries of any commercial waterway district heretofore or hereafter established may be extended by the board of county commissioners so as to include other lands in said county, upon petition signed by the owners of a majority of the area of said lands in the proposed extension; which said petition for extension shall set forth and contain, with reference to the extension, such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original waterway district: Provided further, that all necessary expenses incident to making such extension, together with the proportionate share of the first cost of any system of commercial waterways existing in the original commercial waterway district at the time of making said extension, shall be levied against and apportioned to the land included in such extension as in this act provided. In such case, the board of county commissioners shall give like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may in such case be continued from time to time for a period of not exceeding sixty days, and if on final hearing the board of county commissioners deem it advisable and for the best interest of all concerned, they may grant the prayer of said petitioners in whole or in part, and said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard upon the final hearing thereof. [L. '11, p. 13, § 3. Cf. L. '09, Ex. Sess., p. 9, § 3.]

Cited in 61 Wash. 603—605.

§ 9727. [8169a.] Notice of Election, Requisites of—Commissioners.

Upon the entry of the findings of the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed system of commercial waterways will be of great special benefit to the majority of the area of lands included within said boundaries and will be conducive to the public health, sanitation, welfare and convenience, and will increase public revenue, shall give notice of an election to be held in such proposed commercial waterway district for the purpose of determining whether the same shall be organized under the provisions of this act as a commercial waterway district of the state of Washington, and for the further purpose of choosing at such election three commissioners, who shall be known and designated as "Commercial Waterway Commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said commercial waterway district, and such notice shall describe the boundaries as established by the board of county commissioners on its final hearing of said petition and shall state the name of such proposed commercial waterway district, and approximately, the area of land in said district to be benefited thereby, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county

within which said district is located, and in case no such newspaper be printed or published in such county, then in such newspaper of general circulation therein for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district, which notice shall designate the places within the proposed district where the said election shall be held and require the voters to cast ballots which shall contain the words, "Commercial Waterway District, Yes" or "Commercial Waterway District, No," and also the names of the persons voted for for commissioners for said commercial waterway district. The board of county commissioners shall also appoint two judges, one inspector and two clerks for each of said election places and the compensation shall be the same as hereinafter provided for, and shall be a charge upon said district in case the same be established and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectable from the bond hereinafter provided for, and any person having a charge against said district shall have a right of action thereon. [L. '11, p. 15, § 4. Cf. L. '09, Ex. Sess., p. 11, § 4.]

§ 9728. [8170a.] Electors—Returns—Oath and Bond of Commissioners.

Said election shall be held on the day designated in such notice and shall be conducted as hereinafter provided for, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county in which such district is located, and shall have resided within the boundaries of said proposed district for a period of not less than ninety days next preceding the date of such election, or, unless he shall be the owner of real estate situated within said proposed district. The board of county commissioners shall on the Monday next succeeding said election count and canvass the votes cast thereat, and if on said canvass and count it appears that the majority of votes cast are for the "Commercial Waterway District, Yes," the board shall immediately enter an order upon its records declaring the proposed territory duly organized as a commercial waterway district, giving to such district a proper number, followed by the name of the county and state, and shall, also, declare the three persons who received the highest number of votes duly elected commercial waterway commissioners of such commercial waterway district for the following respective terms of office: The one receiving the highest number of votes, three years; the one receiving the next highest number of votes, two years; and the third member one year. Said commissioners so elected shall hold office for said respective terms and until their successors are elected and qualified. Said board shall cause a copy of the order entered of record duly signed to be filed in the office of the secretary of state, and from and after the date of such filing said organization shall be deemed complete, and the members of said board of commissioners so chosen at such election, before entering upon the discharge of their duties shall qualify as county commissioners are required to qualify and to enter into a bond payable to the state of Washington for the benefit of said district with two or more sureties in the penal sum of not less than one thousand (\$1,000) dollars nor more than five thousand (\$5,000) dol-

lars, conditioned for the faithful performance of their duties as commercial waterway commissioners, to be approved by the board of county commissioners and to be filed with the county clerk of the county in which said district is situated. The members of each successive board of commercial waterway commissioners, whether elected or appointed, shall before entering upon their duties take an oath and enter into a bond, as herein provided, and after being approved by the board of county commissioners shall be filed in the office of the county clerk of the county in which said district is situated. [L. '11, p. 17, § 5; L. '13, p. 115, § 1. Cf. L. '09, Ex. Sess., p. 13, § 5.]

Cited in 86 Wash. 227.

§ 9729. [8171a.] General Elections — Time and Manner of Holding — Judges, etc.

A general election for the election of one member of said board of commercial waterway commissioners for such district shall be held upon the first Tuesday after the first Monday in December of each year after the year in which said district shall have been established and organized, and the term of office of the persons elected thereat shall begin the second Monday of the following January: Provided, that in case of districts heretofore organized an entire board of commissioners shall be elected at the first election to be held hereunder, whose terms of office shall be one, two and three years respectively from said second Monday in January following, in accordance with the respective number of votes received by said three persons as provided in section 9728 for original elections. Said elections shall be held in accordance with the school laws of the state of Washington. No official ballot shall be required at the first or any subsequent election, and the law known as the direct primary law of this state shall have no application to the election held under this act, and the expense thereof shall be defrayed by said district, and the judges, clerks, and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of three (\$3) dollars per day: Provided, that at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such commercial waterway district by posting the same in four public places within the said district. Said notice shall designate the voting places and contain the names of two electors of said district for each of said voting places as judges of said election, and the name of one elector of said district, for each of said voting places as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall act as a canvassing board to canvass the votes of each election, and they shall meet the day following such election and canvass said votes and declare the result thereof and issue certificates of election. [L. '11, p. 18, § 6; L. '13, p. 116, § 2. Cf. L. '09, Ex. Sess., p. 14, § 6.]

§ 9730. Issuance of Refunding Bonds.

That all bonds heretofore issued or hereafter to be issued by any commercial waterway district of the state of Washington, may be refunded in the discretion of the board of commissioners of such district

in the manner hereinafter provided, whenever in the discretion of the board it becomes advisable so to do: Provided, however, that such refunding shall not operate so as to accelerate the maturity of any outstanding bonds which are so sought to be refunded. All the provisions of the existing laws relating to bonds of commercial waterway districts shall apply to any such refunding bonds, except that such refunding bonds may be exchanged for outstanding bonds without notice: Provided, that the same are so exchanged at not less than par value: And provided further, that such refunding bonds shall be payable in not less than five (5) years, nor more than twenty (20) years from their date, and may be payable in installments from year to year covering a period of not less than five (5) years commencing from said five (5) years from date. [L. '17, p. 616, § 1.]

The title to the act of 1917 is sufficient Commercial Waterway District, 107 Wash. under Const., Art. II, § 37: Behrens v. 155, 181 Pac. 892, 185 Pac. 628.

§ 9731. [8172a.*] Powers of Commissioners.

Any commercial waterway district organized or validated under the provisions of this act, or attempted to be organized under the provisions of any previous act and validated under the provisions of any other act, shall have the following powers and authority:

(a) The right of eminent domain, with power by and through its board of commissioners to cause to be condemned and appropriated private property for the use of said organization in the construction and maintenance of a system of commercial waterways and make just compensation therefor: Provided, that the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: Provided, further, that the said board of commissioners shall have the power to acquire by purchase all the property necessary to make the improvements herein provided for.

(b) Said board of commissioners herein provided shall have the right, power and authority to straighten, widen, deepen and improve any and all rivers, watercourses, streams, whether navigable or otherwise, flowing through or located within the boundaries of said district, or extensions or enlargements thereof.

(c) To construct all needed and auxiliary ditches, canals, flumes, locks, dikes, and all other artificial appliances in the construction of a commercial waterway system, and which may be necessary or advisable to protect the land in any commercial waterway district, from overflow, or to assist and become necessary in the preservation and maintenance of such commercial waterway system.

(d) In the accomplishment of the foregoing objects, the commissioners of said waterway district are hereby given the right, power and authority by purchase or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary and needed rights of way in the straightening, deepening, or widening, or otherwise improving of such rivers, watercourses or streams, and such auxiliary ditches, canals, flumes and dikes hereinabove mentioned, and when so acquired shall have and are hereby given the right, power and authority by and with the consent and approval of the United States government

in cases where such consent is necessary, to divert, alter and change the bed or course of or otherwise improve any such river, watercourse or stream aforesaid, or to deepen, widen or straighten the same: Provided, that such diversion, alteration or change shall not be had without payment of compensation or damages for any property rights, riparian or otherwise, that may be taken or damaged thereby. Said district and its board of commissioners shall also have the right, power and authority to acquire, either by condemnation or purchase, or both, all such property and property rights adjoining or in the vicinity of any system of commercial waterways as may be necessary or advantageous or proper for the construction and establishment of slips, docks, wharves or landing places or other aids to navigation and commerce in connection with the use of any such commercial waterway, and to pay for any or all such, either by means of the proceeds of sale of abandoned beds of streams, which the district may have acquired, or by exchanging property in said abandoned beds, as the board of commissioners may deem advisable. Said district through its board, shall also have power to lease all properties or lands on such terms and in such manner as the commissioners may deem advisable from time to time.

(e) The right, power and authority to acquire the necessary and needed rights of way for any and all purposes created by this act may be acquired by the commissioners of any waterway district over and across or upon any land or interest therein of the state of Washington, or any county of this state, and streets, alleys and avenues, or public places of any city, town or municipal corporation of this state: Provided, however, that the construction of such commercial waterway or commercial waterways shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such commercial waterway or commercial waterways, sewers, water-pipes, mains, the granting of any franchise thereon, or improve by the way of planking, replanking, paving, repaving or any other power, right and authority which, but for this act, such city or town would have in or to such street, avenue, alley or public place, except, however, that such right, power and authority on behalf of such city or town shall not be exercised either by such city or town or by any person or persons, firms or corporations, to whom it might grant any right or franchise which will materially impair the efficiency of said commercial waterway or commercial waterways. The provision of this section as regards such system of commercial waterway or commercial waterways, to be constructed within the boundaries of any incorporated city or town, shall apply to the extension or enlargement of any commercial waterway or commercial waterways already existing upon, over, and across any street, avenue, alley or public place, of any city or town, as well as the original construction thereof. [L. '17, p. 617, § 2; L. '11, p. 19, § 7. Cf. L. '09, Ex. Sess., p. 14, § 7.]

Cited in 76 Wash. 185, 192; 77 Wash. 199.

A commercial waterway district may be established for the combined purposes of waterways and drainage projects: Commissioners' Commercial Waterway Dis-

trict v. Seattle Factory Sites Co., 76 Wash, 181, 135 Pac. 1042.

Property of a public service company already devoted to a public use may be condemned under this section: Newell v. Loeb, 77 Wash. 182, 137 Pac. 811.

§ 9732. [8173a.] State's Interest in Shore Lands Vested in District—Disposal.

All the right, title and interest of the state of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any commercial waterway district up to and including the line of ordinary high tide in waters where the tide ebbs and flows and up to and including the line of ordinary high water within the banks of any navigable rivers and lakes, to the extent that the same, under any proceedings to be had under this act, shall cease to become part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given and granted and vested in the respective commercial waterway districts now existing, or hereafter to be formed, and the commissioners of such respective commercial waterway districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notice and proceedings as govern, under the existing laws of the state, the board of county commissioners in the sale and disposition of any real estate belonging to the counties of this state. The proceeds of such sales are to be used for the benefit of such commercial waterway districts, and the payment of any expenses connected with the construction of such commercial waterways or maintenance thereof: Provided, however, that the commissioners of such commercial waterway district may, in their discretion, exchange such abandoned beds and shores, for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams, and which exchange may be made upon such terms and conditions and in such areas as, in the discretion of such commissioners, they may deem advisable and for the best interests of such commercial waterway district without any notice or other formality or proceedings whatever. [L. '11, p. 21, § 8. Cf. L. '09, Ex. Sess., p. 16, § 8.]

Riparian owners upon a navigable stream acquire no title to portions of the beds and shores abandoned by the state in improving and straightening the stream, under this section, since the state's title is paramount, and riparian rights are subject to the rights of navigation, and extend only to the use and accustomed flow of water, unless new lands result from accretion, reliction, or avulsion: *Hill v. Newell*, 86 Wash. 227, 149 Pac. 951.

§ 9733. [8173-1.] Lowering of Shore Lines—Water Line to be Boundary—Title.

In every case where the state of Washington has heretofore sold to any purchaser from the state any second class shore lands bordering upon navigable waters of this state by description wherein the water boundary of the land so purchased is not defined, such water boundary shall be held and is hereby declared to be the line of ordinary navigation in such water; and whenever such waters have heretofore been or shall hereafter be lowered by any action done or authorized either by the state of Washington or the United States such water boundary shall thereafter be held and is hereby declared to be the line of ordinary navigation as the same shall be found in such waters after such lowering, and there is hereby granted and confirmed to every such purchaser,

his heirs and assigns, all such lands: Provided, however, that this act shall not apply to such portions of such second class shore lands which shall as hereinafter provided be selected by the commissioner of public lands of the state of Washington for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes: Provided, further, that all shore lands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shore lands southerly along the westerly shore of said lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W. M., are hereby reserved for public uses and are hereby granted and donated to the city of Seattle for public park, parkway and boulevard purposes, and as a part of its public park, parkway and boulevard system and any diversion or attempted diversion of such lands so donated from such purposes shall cause the title to said lands to revert to the state. [L. '13, p. 667, § 1.]

Cited in 76 Wash. 170; 86 Wash. 3; 93 Wash. 132, 133.

This section, undertaking to confirm to purchasers of certain shore lands upon a lake the title to shore lands subsequently uncovered by the artificial lowering of the waters of the lake, excepting portions reserved for harbor area and certain public purposes, is an acknowledgment of an existing right rather than a grant of a new right; and the rights of purchasers are to be measured by pre-existing laws: State v. Sturtevant, 76 Wash. 158, 135 Pac. 1035, 138 Pac. 650.

Under this section, a grant of shore lands is made in contemplation of a change in physical conditions and that a new line of navigability will be assimilated on the lowering of the waters; but, until that change occurs, the established harbor line is the limit of the fixed title of the shore owners; hence the relative rights of shore owners and occupants of lands in front of the present line of navigability is determined by the granting act supra: State v. Sturtevant, 86 Wash. 1, 149 Pac. 33.

§ 9734. [8173-2.] Commissioner of Public Lands to Survey and Select Dock Sites, etc.—Title of Streets.

Within twelve months after the taking effect of this act it shall be the duty of the commissioner of public lands to survey such second class shore lands and in platting such survey to designate thereon as selected for public use all of such shore lands as in the opinion of said commissioner of public lands is available, convenient or necessary to be selected for the use of the public as harbor areas and sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys and other public purposes. Upon the filing of such plat in the office of the commissioner of public lands, the title to all harbor area so selected shall remain in the state, the title to all selections for streets, avenues and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which situate, the title to and control of any lands so selected and designated upon such plat for parkway and boulevard purposes shall, if the same lie outside of the corporate limits of any city or town and if the same form a part of the general parkway and boulevard system of a city of the first class, be in such city, the title to all selections for commercial waterway district purposes shall vest in the commercial waterway district in which situate, or for which selected, and the title to all selections for slips, docks, wharves, warehouses and other public

purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situate. [L. '13, p. 668, § 2.]

Cited in 86 Wash. 232; 93 Wash. 133, 137.

§ 9735. [8174a.] State, Counties and Cities may Sign Petition—Appropriations.

(a) Whenever the county owns any lands situated within the boundaries of the proposed commercial waterway district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such commercial waterway districts for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of majority signature in the area of the land to the petition for a formation of such district.

(b) Whenever any city or town owns any land situated within the boundaries of a proposed commercial waterway district, the city comptroller, when so directed by the council of said city or town in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such commercial waterway districts for and on behalf and as the act and deed of such city or town, and when so signed the same shall be considered in determining the question of majority signature in the area of land to the petition for the formation of such district.

(c) Whenever the state of Washington owns any land situated within the boundaries of the proposed commercial waterway district the commissioner of public lands of the state of Washington, when so directed by the board of said land commissioners of said state, is hereby authorized to sign the petition praying for the formation of such commercial waterway district for and on behalf and as the act and deed of such state, and when so signed the same shall be considered in determining the question of majority signature in the area of the land to the petition for the formation of such district.

(d) Whenever any highway, roads or bridges are maintained by the county in which a commercial waterway district may be established, as herein provided, and it shall appear that the construction and maintenance of such commercial waterway system will be beneficial to such highways, roads and bridges or which will be beneficial to such highways, roads and bridges as may hereafter be constructed or maintained by the county in which such system of commercial waterways is situated, then the board of county commissioners of such county may, and it shall be the duty of such board to appropriate to such commercial waterway district an amount of money sufficient to pay the proportionate share of such county in accordance with the benefits received or to be received; whenever it may appear to the board of county commissioners of any county that any improvements made or to be made in any commercial waterway district under the provisions of this act shall, on account of the health of the people of the county, be beneficial in respect thereto, the board of county commissioners may make an appropriation of money to such commercial waterway district in such an amount to such board as may seem proper.

(e) Whenever it shall appear to the city or town council of any incorporated city or town, not included or wholly or partly included within the limits of any commercial waterway district that the construction and maintenance of such commercial waterway system will be of special commercial benefit and will be beneficial to the health and sanitation of the inhabitants of such incorporated city or town and to the general welfare of the said city or town, then the said city or town council is hereby empowered and authorized to appropriate such amount of money out of the general funds of the said city or town as may to the said city or town council seem proper and just to such commercial waterway system, or the city or town council may for such purpose levy an assessment upon all the property in said city and town subject to taxation by said city or town, which shall not exceed one-half mill for each dollar of property.

(f) Public highways, streets and alleys shall not be considered in computing the area of said district. [L. '11, p. 22, § 9. Cf. L. '09, Ex. Sess., p. 17, § 9.]

§ 9736. [8175a.] Board of Commissioners, Powers and Duties of—Vacancies.

Said board of commercial waterway commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all commercial waterways or commercial waterways systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation, such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county, and said appointee shall serve until the next annual election and until his successor is elected and qualified: Provided, that in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment. [L. '11, p. 24, § 10; L. '13, p. 117, § 3. Cf. L. '09, Ex. Sess., p. 19, § 10.]

§ 9737. [8176a.] Petition for Construction, Contents—Parties.

Whenever it is desired to prosecute the construction of a system of waterways within said district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route or routes over which the same is to be constructed, with a reasonably accurate description thereof, together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement, the description of the land owned by each such land owner, and the maximum amount of benefits to be derived by each such lot, tract or parcel of land set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, sanitation, convenience and welfare and increase the value of all of said

property for purposes of public revenue. Said petition shall further set forth a reasonably accurate description of the tracts or parcels of land or property which will be taken or damaged by said improvement, and the names of the owners and occupants thereof, and all persons having any interest therein so far as known to the officers filing the petition or appearing from the records in the office of the county auditor, the total amount of land necessary to be taken therefor, and an estimate of the value of said land so sought to be taken. The said petition shall set forth as defendants therein all persons or corporations whose lands would be benefited by said improvement, or whose lands are sought to be appropriated for said improvement, or whose lands will be damaged thereby, or who have any interest in any of said lands or property as mortgagee, or otherwise appearing on the records of the county auditor's office. Said petition shall also set forth that said proposed system of waterways is necessary, and that all lands sought to be appropriated for rights of way or other purposes are necessary to be used in the construction and maintenance of said improvement. [L. '11, p. 24, § 11. Cf. L. '09, Ex. Sess., p. 20, § 11.]

Cited in 76 Wash. 186.

§ 9738. [8177a.] Board may Employ Engineers, Surveyors, etc.

In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, or at any other time, the said board of commissioners of said commercial waterway district may employ one or more good and competent engineers, surveyors and draftsmen to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal and other assistance as may be necessary, with full power to bind said district for the compensation of such assistance or employees employed by them, and such services shall be taxed as costs in the suit. [L. '11, p. 25, § 12. Cf. L. '09, Ex. Sess., p. 20, § 12.]

Cited in 80 Wash. 281, 282.

Under this section, the commissioners have no power to enter into a contract to employ an engineer as an expert adviser for the purpose of preparing the assessment-roll, at \$300 per month, the employment to continue until the roll had been finally settled by the superior court;

since after the work was completed and before termination of the employment, a considerable period of time must elapse during which no service could be rendered: *Merrifield v. Commercial Waterway Dist. No. 1*, 80 Wash. 279, 141 Pac. 685.

§ 9739. [8177-1.] Summons—Service—Proof.

A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated or damaged, and those which it is claimed to be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication),

shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of the person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state, with some person more than sixteen years of age; in case of domestic corporations, said service shall be made upon the president, secretary or other director or trustee for such corporation; in case of minors, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or insane persons, on their guardian; or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated or damaged, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated or damaged, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real or other property is a nonresident of this state, or where the residence of such owner or person is unknown, an affidavit of one or more of the commissioners of said district shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands are situated, once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated or damaged, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each nonresident person or person whose residence is unknown. Such summons may be served by any competent person over twenty years of age. Due proof of service of such summons by affidavit of publication shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: Provided, that personal service upon any party outside of the state shall be of like effect as service by publication. [L. '11, p. 25, § 13.]

Cited in 76 Wash. 186.

§ 9740. [8177-2.] Defendants may Appear for Hearing.

Any or all of said defendants may appear jointly or separately at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be fully satisfied by competent proof that said improvement is practicable and conducive to the public health, sanitation, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to fix the compensation and to assess the damages and benefits, as herein provided, if in attendance upon his court, unless a jury is waived; and if not he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summons from the citizens of the county in which the petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless a jury be waived. If necessary, to complete the jury in any case, the sheriff, under the directions of the court or the judge thereof, shall summons as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the cost in the proceedings and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or land owner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvement and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find a maximum amount of benefits per acre or per lot or tract to be derived by each of the land owners. And upon a return of the verdict into court the same shall be reported as in other cases; whereupon, a decree shall be entered in accordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said property be appropriated, and directing the commissioners of the district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said district. [L. '11, p. 27, § 14.]

Cited in 76 Wash. 187; 77 Wash. 189, 204.

This section is not objectionable in that the amount of benefits found may exceed

the cost of the improvement; and the jury must determine the maximum benefits at the time of the trial, without deductions for streets that might be opened in the future: *Newell v. Loeb*, 77 Wash. 172, 137 Pac. 811.

Under this section, failure to serve all of the defendants does not vitiate the proceedings as to defendants already duly

served, in view of the provision that want of service shall render the proceedings void as to the parties not served, but that all persons served shall be bound, and sections 9747 and 9748, providing for bringing in persons not served and for subsequent trials in such cases: *State ex rel. Puget Mill Co. v. Superior Court*, 68 Wash. 425, 123 Pac. 791.

§ 9741. [8181a.] Procedure as to Parties Claiming Interest in Property Damaged.

Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: Provided, such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation. [L. '11, p. 29, § 15. Cf. L. '09, Ex. Sess., p. 22, § 16.]

§ 9742. [8182a.] View by Jury.

The court may, upon the motion of such district or of any defendant, direct that said jury (under the charge of any officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement. [L. '11, p. 29, § 16. Cf. L. '09, Ex. Sess., p. 22, § 17.]

§ 9743. [8183a.] Buildings—Assessment and Measure, of Damages.

If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left together with the depreciation in the market value of said building by reason of said readjustment or moving. [L. '11, p. 29, § 17. Cf. L. '09, Ex. Sess., p. 22, § 18.]

§ 9744. [8184a.] Separate Findings as to Several Interests—Adverse Claimants.

If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may be separately found by the jury on the request of any party. In making such findings, the jury shall first find and set forth in their verdict the total amount of the damage to said land and buildings and all premises therein, estimating

the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same in proportion to their several interests and claims and the damages sustained by them respectively, and set forth such apportionment in their verdict. No delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case the jury shall ascertain the entire compensation or damage that should be paid for the property and the entire interests of all the parties therein, and the court may thereafter require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation. [L. '11, p. 30, § 18. Cf. L. '09, Ex. Sess., p. 22, § 19.]

§ 9745. [8184-1.] Providing for Omission—Levy.

If the board of waterway commissioners shall, at any time, discover that any lands within said district will be benefited by the waterway system, and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for herein, or which were omitted for the reason that they were not at the time of assessing the benefits provided for herein, for any cause, subject to a legal assessment, said commissioners shall file a petition in the superior court in the original cause setting forth the facts of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the names of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: Provided, that a jury may be waived as in other proceedings herein: And provided, further, that in case the expense and the cost of the improvements has been paid for by assessments levied against the land assessed in the original proceedings before the lands provided for in this section are assessed, as provided herein, then, in such case, the assessments levied from time to time on said last-mentioned land shall be paid into the maintenance fund of said district. [L. '11, p. 30, § 19.]

§ 9746. [8184-2.] Appeal to Supreme Court.

Every person or corporation feeling himself or itself aggrieved by any judgment for damages or compensation or any assessment of benefits provided in this act, may appeal to the supreme court of the state within

thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of compensation or damages or assessment of benefits in respect to the parties to the appeal. Upon such appeal no bonds shall be required and no stay shall be allowed. [L. '11, p. 31, § 20.]

Cited in 76 Wash. 187; 82 Wash. 34.

§ 9747. [8185a.] Procedure—Judgment—New Trial, Parties not Served.

Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgments shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court shall impanel a jury to ascertain the compensation so to be made to such defendant or defendants for property taken or damaged, and to ascertain and determine the maximum benefits received by any such property, and like proceedings shall be had for such purpose as herein provided. [L. '11, p. 31, § 21. Cf. L. '09, Ex. Sess., p. 23, § 20.]

§ 9748. [8186a.] Change in Ownership—Procedure.

The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury unless a jury be waived, and ascertain the just compensation to be made for the property, or the damages thereto or benefits received by said property which has been owned by the person or persons so ceasing to own the same, and the court may, upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order. [L. '11, p. 32, § 22. Cf. L. '09, Ex. Sess., p. 23; § 21.]

§ 9749. [8187a.] Infants, Insane, etc., Guardian ad Litem for.

When it shall appear from the said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or incompetent person is interested in any property that is to be taken or damaged, or benefited, the court shall appoint a guardian ad litem for such infant or insane or incompetent person to appear and defend him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or incompetent person in such property or the compensation which shall be awarded therefor and benefits to be assessed. [L. '11, p. 32, § 23. Cf. L. '09, Ex. Sess., p. 24, § 22.]

§ 9750. [8188a.] Finality and Conclusiveness of Judgment—Costs—Appeal.

Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding

or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs, which shall be taxed as in other civil cases: Provided, that in any case defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement, and as to the compensation to be allowed for property taken, unless appealed from, and no appeal from the same shall delay the proceedings, if such district shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such districts, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation or damages which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by such district, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court and final judgment may be rendered in the superior court as in other cases. [L. '11, p. 32, § 24. Cf. L. '09, Ex. Sess., p. 24, § 23.]

Cited in 61 Wash. 603.

§ 9751. [8189a.] Title Vests upon Payment of Judgment into Court.

The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with the costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the district shall have the right at any time thereafter, to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon the title to any property so taken shall be vested in fee simple in such district. [L. '11, p. 33, § 25. Cf. L. '09, Ex. Sess., p. 25, § 24.]

§ 9752. [8190a.] Dismissal When Damages and Costs Exceed Benefits.

In case the damages or amount of compensation for such property, together with the estimated costs of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or, if said improvement is not practicable, or will not be conducive to the public health, sanitation, welfare and convenience, or will not increase the public revenue, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said

organization shall be dissolved by decree of said court. [L. '11, p. 34, § 26. Cf. L. '09, Ex. Sess., p. 25, § 25.]

Cited in 77 Wash. 188.

§ 9753. [8191a.] Conflicting Claims to Money Paid into Court — Procedure.

Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment of such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, and real estate or premises be determined according to law. [L. '11, p. 34, § 27. Cf. L. '09, Ex. Sess., p. 25, § 26.]

Cited in 61 Wash. 604.

§ 9754. [8192a.] Collection of Assessments—Extension of Tax-rolls.

Upon the entry of the judgment, the clerk of said court shall immediately prepare a transcript which shall contain a list of the names of all persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by such improvement belonging to each person and corporation, and shall file the same with the auditor of the county for convenience of reference; and from and after the entry of such judgment in the office of the clerk of the court in which the same is rendered, all the lands included in the list of lands benefited by such improvement shall stand charged with the entire cost and expense of said improvement and the other costs, expenses and charges provided for by this act, not exceeding with respect to any lot or tract of land (so far as concerns the original cost) the maximum amount stated or declared in such judgment to be the maximum amount of benefits to be derived by such lot or tract of land or the owners thereof, and all such lands shall thereafter be subject to the assessments to be levied by the board of commissioners for said purposes, which assessments shall be levied pro rata in proportion to the maximum amount of benefits as to each lot or tract of land as stated or declared in such judgment. All assessments shall be levied from time to time by the board of commissioners by written notice to be addressed to and served on the county assessor of the county, which notice shall be so served on the county assessor on or before the first day of November in each year, or as soon thereafter as practicable, and such assessments shall be levied against and apportioned to the lands in such district benefited by said improvement in proportion to the maximum benefits originally determined by the judgment of the court and such assessments shall fall due during the then ensuing calendar year at the

time of the falling due of general taxes, and the amount so designated shall be added by the county assessor to the general taxes of each person or corporation, and to the general taxes against each lot or tract of land or other property, according to such notice, and the several amounts thereof shall be placed upon the general tax-rolls in the office of the county assessor and shall be deemed for all purposes a part of the general taxes, and shall constitute liens against each such lot or tract of land of equal rank with state, county and city taxes and shall have the same priority over all other liens as state, county and city taxes have, and shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and for all purposes of delinquency, certificates of delinquency, foreclosure and other proceedings leading up to final payment, enforcement and collection, such assessments shall be deemed a part of the general taxes as aforesaid. The amount of the assessment levied by the commissioners during any one year shall not exceed twenty-five per cent of the amount estimated by the board of commissioners to be necessary to pay the cost of the proceedings and the establishment of said district and waterway system, and the cost of construction of said work: Provided, that this limitation shall not apply to assessments levied to pay the principal or interest of any bonds issued under authority of this act, or levied for maintenance charges as provided by section 9759. And provided further, that where the amount realized from the original assessment shall not prove sufficient to complete the original plans and specifications of any waterway system, alterations, extensions or changes therein for which the said original assessment was made, the board of commissioners of said district shall make such further assessment as may be necessary to complete said system according to the original plans and specifications, which assessment shall be made and collected in the manner provided herein for the original assessment. This amendment shall not be construed to impair or prejudice any proceedings had or taken by any commercial waterway district prior to this amendment under the act hereby amended or any other act relating to commercial waterway districts, but all such proceedings may be continued and carried out under the provisions of this act as hereby amended the same as if originally commenced under the provisions of this act as hereby amended. All proceedings, acts and things which may heretofore have been had or done or attempted to be had or done under the provisions of the act hereby amended or any other act of the legislature relating to commercial waterways shall be considered and deemed a full compliance with the provisions of this amendatory act with reference thereto. And in all cases where any county assessor has prior to this amendment entered upon any county tax-rolls by direction of the board of commissioners of any such district an assessment ordered by them and made pro rata in proportion to the several amounts fixed in any such court judgment as to the respective maximum amounts of benefits to be derived by each lot or tract of land, notwithstanding that the provisions of this section or of the other sections of the act of which this act is amendatory have not been strictly pursued, nevertheless the said entries upon said tax-rolls be and the same

are hereby validated and confirmed and given the same effect in all respects as if the said amounts had been entered upon such tax-rolls strictly in accordance with the provisions of the law then existing, and all such assessments shall be treated as if levied under the provisions of said act as hereby amended. [L. '11, p. 34, § 28; L. '13, p. 118, § 4. Cf. L. '09, Ex. Sess. p. 26, § 27.]

Cited in 107 Wash. 156, 159, 164.

This section does not authorize a levy to meet interest payments on bonds in addition to the maximum benefits found,

in view of section 9761, *infra*: Behrens v. Commercial Waterway District No. 1, 107 Wash. 155, 181 Pac. 892, 185 Pac. 628.

§ 9755. [8193a.] Dismissal—Levy and Collection of Taxes to Pay Costs.

In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said waterway commissioners shall levy a tax upon all the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment and the costs of levying said tax, and shall cause said tax-roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax-roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same right of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes. [L. '11, p. 36, § 29. Cf. L. '09, Ex. Sess., p. 27, § 28.]

§ 9756. [8194a.] Construction—Letting of Contract—Contractor's Bonds.

After the filing of said transcript said commissioners of such waterway district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof, they shall have full charge and management thereof, shall have the power to employ such assistance as they may deem necessary and purchase all material and employ all labor that may be necessary in the construction and carrying on of the work of said improvement; and shall have power to let the whole or any portion of said work to any responsible contractor which said contract shall be let to the lowest responsible bidder after advertising for bids for such work in two successive issues of some weekly newspaper printed and published in such county, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: Provided, that the commissioners of said commercial waterway district may sell or otherwise dispose of all excavating material of every kind in such manner and upon such terms and conditions as in their discretion they may deem advisable and for the best interest of such commercial waterway district without any notice or other formalities or proceedings whatever. The proceeds of any sale of such excavated material are to be used for the benefit of such commercial waterway district and the payment of any expense connected with the cost of con-

struction or maintenance thereof: Provided further, that in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said waterway district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said waterway districts in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: Provided further, that no sureties on said last-mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvement file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said waterway district. [L. '11, p. 36, § 30; L. '13, p. 120, § 5. Cf. L. '09, Ex. Sess., p. 27, § 29.]

Cited in 61 Wash. 605.

§ 9757. [8195a.] Changes in Location, System, etc., Procedure to Obtain.

The work on said improvement shall begin and shall be completed with all expedition possible, and said board of commissioners of such waterway district, or any contractor thereunder, shall have no power whatever to change said route or system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the land owners to be benefited thereby, and the land owners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said land owners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plan or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners shall cause a summons

to be served, setting forth the prayer of said petition, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the land owners of or others claiming any lien or record interest in the lands benefited or damaged by said improvement or by said proposed change in said improvement, and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of said proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvements, then the court, after having passed upon all preliminary questions as in the original proceedings shall cause, unless a jury be waived, a jury to be impaneled as in the case of the original proceeding for the establishment of said improvements, and upon the final hearing of said cause, the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition, by reason of such proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said land owners by reason of said proposed change in said improvements, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings upon the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvements according to the changes made therein. [L. '11, p. 37, § 31. Cf. L. '09, Ex. Sess., p. 28, § 30.]

§ 9758. [8196a.] Payments to Contractor—Reserve.

During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: Provided, that no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five per cent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five per cent of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements; and upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [L. '11, p. 39, § 32. Cf. L. '09, Ex. Sess., p. 30, § 31.]

§ 9759. [8197a.] Annual Maintenance Tax, Levy of.

The board of commissioners of any commercial waterway district shall on or before the first day of November of each year, make an estimate

of the cost of maintenance of the waterway system, constructed in such district which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimates shall be made for the succeeding year and the amount so estimated shall be certified by the board of commissioners to the auditor of the county in which such district is located, on or before said date and the amount thereof shall be levied against and apportioned to the lands in such district benefited by said improvement in proportion to the maximum benefits originally assessed by the judgment of the court, and said amount shall be added to the general taxes against said lands and collected therewith. [L. '11, p. 39, § 33. Cf. L. '09, Ex. Sess., p. 30, § 32.]

§ 9760. [8198a.] Board, Organization and Officers of — Warrants.

The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their proceedings, and may issue warrants of such district in payment of all claims of indebtedness against such district; such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw interest at a rate to be fixed by said board, from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: Provided, that no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [L. '11, p. 40, § 34; L. '13, p. 122, § 6. Cf. L. '09, Ex. Sess., p. 31, § 33.]

§ 9761. [8199a.] Issuance of Bonds and Payments of Warrants.

At any time after the entry of a judgment in a proceeding brought under the foregoing provisions of this act, the board of commissioners of such waterway district may issue bonds as hereinafter provided for all or any part of the total amount of the cost of construction of said improvement, together with the cost of the establishment of the district and any and all other expenses of every kind connected with the completion of such waterway system, including the damages assessed and compensation made to land owners for right of way and the expenses and costs of the entire proceedings, and the purpose of issuing such bonds may embrace, in whole or in part, the funding of any outstanding warrants or obligations of such district. In case such bonds are issued there is hereby appropriated and pledged for the payment thereof a sufficient amount of all the maximum benefits stated or declared, or to be stated or declared, by the judgment of the court against all the lands benefited and to be benefited by the improvement within such district and there is hereby appropriated and pledged for such payment a sufficient amount of all sums charged against such lands and the assessments therefor as will be sufficient to pay all such bonds as the same or any part thereof become due; and while any such bonds shall be outstanding the board of commissioners shall at no time levy any assessment for any purpose, other than their payment, which shall so far impair the fund to be realized from the collection of all the

assessments as to jeopardize the payment of such bonds or to reduce such fund below the point where there will be ample amounts still leviable to provide for the payment thereof. The bonds hereby authorized shall not be sold for less than par value. All bonds and warrants issued under the authority of this act shall be legal securities which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys. When the county treasurer shall have on hand money of such district available for the payment of the warrants of such district, he shall call such warrants in the same manner and under the same conditions as county warrants. [L. '11, p. 40, § 35; L. '13, p. 122, § 7. Cf. L. '09, Ex. Sess., p. 31, § 34.]

Cited in 107 Wash. 161.

§ 9762. [8200a.] Bonds—Form, Denomination, Interest—Coupons.

Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred (\$100) dollars, nor more than one thousand (\$1,000) dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten (10) years nor less than five (5) years from the date of their issue, and bear interest at a rate not exceeding seven per cent per annum, payable semi-annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of waterway commissioners, and shall be attested by the secretary of the board, and the seal of such district shall be affixed to each bond, but not to the coupons: Provided, however, that said coupons in lieu of being so signed may have printed thereon a facsimile of the signatures of such officers. [L. '11, p. 41, § 36; L. '13, p. 124, § 8. Cf. L. '09, Ex. Sess., p. 32, § 35.]

§ 9763. [8201a.] Bonds may be Exchanged for Warrants.

Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds. [L. '11, p. 41, § 37. Cf. L. '09, Ex. Sess., p. 32, § 36.]

§ 9764. [8202a.] Liquidation of Bonds, Levy of Assessment for—Separate Fund.

Beginning five years before said bonds shall become due, the commissioners of such commercial waterway district issuing them are hereby authorized and required to levy four annual assessments each equal to twenty-five per cent of the total amount necessary to liquidate said bonds at maturity; such assessments shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section. [L. '11, p. 41, § 38; L. '13, p. 124, § 9. Cf. L. '09, Ex. Sess., p. 32, § 37.]

§ 9765. [8203a.] Bonds, Payment of and Calls for.

It shall be the duty of the treasurer in any county in which there may be a district issuing bonds under the provisions of this chapter to

call in for payment on each interest day on and after five years from the date of any such bonds in numerical order beginning with bond number one, as many of such bonds as can be paid out of the funds on hand for that purpose. Said call shall be published for two consecutive weeks in the newspaper doing the county printing, the first publication to be two weeks prior to the said interest day, and shall state the numbers of bonds so called and that interest thereon will cease on said interest day. [L. '11, p. 41, § 39; L. '13, p. 124, § 10. Cf. L. '09, Ex. Sess. p. 32, § 38.]

§ 9766. [8204a.] Payment of Coupons, Annual Levy for.

It shall be the duty of such waterway commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. The proceeds of said levy shall be set apart by the county treasurer as a special fund to be known as the "Interest Fund." Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this chapter, and, when presented to the county treasurer, and no funds are in the treasury to pay said coupons, it shall be his duty to indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which they belong and be subject to call in the same manner as other warrants. [L. '11, p. 42, § 40; L. '13, p. 125, § 11. Cf. L. '09, Ex. Sess., p. 33, § 39.]

§ 9767. [8205a.] Registration of Bonds.

Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer. [L. '11, p. 42, § 41. Cf. L. '09, Ex. Sess., p. 33, § 40.]

§ 9768. [8206a.] Warrants—Presentation and Indorsement—Calls for.

All warrants issued under the provisions of this chapter shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspapers doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said

notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement. [L. '11, p. 42, § 42. Cf. L. '09, Ex. Sess., p. 33, § 41.]

§ 9769. [8207a.] Submission of Questions to Jury.

Upon the trial of any questions of issue by a jury under the provisions of this chapter the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [L. '11, p. 43, § 43. Cf. L. '09, Ex. Sess., p. 34, § 42.]

§ 9770. [8208a.] Eminent Domain Extended to Public Lands.

All state, county, school district, or other lands belonging to other public corporations shall be subject to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporation. [L. '11, p. 43, § 44. Cf. L. '09, Ex. Sess., p. 34, § 44.]

§ 9771. [8209a.] Assessment of Benefits Against State and Municipalities —Payment.

In case lands belonging to the state, county, school district or other public corporation are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporation at the times and in the manner as assessments are called and paid in case of private persons, out of any general fund of such corporation. [L. '11, p. 43, § 45. Cf. L. '09, Ex. Sess., p. 34, § 44.]

§ 9772. [8210a.] Fees for Service of Process.

Fees for services of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law. [L. '11, p. 43, § 46. Cf. L. '09, Ex. Sess., p. 34, § 45.]

§ 9773. [8211a.] Compensation of Board, Objections to.

In performing their duties under the provisions of this chapter the board of waterway commissioners shall receive such compensation as may be just and reasonable for all necessary services actually performed, not exceeding three dollars per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either or all of such board, that the same is just, reasonable, necessary and that such services were actually performed, and that no part of said compensation has ever been paid, and in case such services are rendered by said board in the establishment or construction of said improvement, or any extension thereof, the amount

thereof so allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: Provided, that any person interested therein may file objections to the allowance asked for either in whole or in part, and such claims so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereof. Said board of commissioners, or the member thereof, presenting such claims or allowance, shall, at the time of the filing thereof in the court, post notices in at least four public places within said district, which said notices shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of the filing thereof and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of such claim or any portion thereof, within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any be made and filed, and shall in its discretion, make such allowance in such amount as it may deem to be just in the premises, and the same shall be paid as other claims against said district are paid. [L. '11, p. 43, § 47. Cf. L. '09, Ex. Sess., p. 34, § 46.]

§ 9774. [8212a.] Court may Compel Performance by Mandatory Injunction.

The superior court may compel the performance of the duties imposed by this chapter, and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [L. '11, p. 44, § 48. Cf. L. '09, Ex. Sess., p. 35, § 47.]

§ 9775. [8212b.] Former Districts Declared Valid.

The organization, establishment and creation of all commercial waterway districts in this state heretofore had, or made, or attempted under provisions of Remington and Ballinger's Code, sections 8166 to 8212, under which attempted organization, establishment or creation, an organized district has been maintained since the date of such attempted organization, establishment or creation is hereby for all purposes declared legal and valid, and such commercial waterway districts are hereby declared duly organized, established and created. And all debts, contracts and obligations heretofore made or incurred by or in favor of any such commercial waterway district so attempted to be organized, established and created, and all official bonds or other obligations executed in connection with or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect: Provided, that nothing herein shall be construed to legalize or validate any attempted assessment or condemnation which may have been had by such district prior to the passage of this act. [L. '11, p. 10, § 1; L. '11, p. 45, § 49.]

§ 9776. [8212c.] Districts Formed Under Previous Acts.

Nothing herein contained shall be considered as repealing any of the provisions of any act of the legislature relating to the validation and legalization of commercial waterway districts and obligations incurred by such attempted organizations, but all provisions of this act relating to the conferring of rights, powers and authority shall be deemed applicable to all commercial waterway districts, whether organized or validated under the provisions of this act or organized or validated or legalized under or by virtue of any other act. All proceedings, acts and things which may heretofore have been had or done or attempted to be had or done under the provisions of any other act of the legislature relating to commercial waterways shall be considered and deemed a full compliance with the provisions of this act with reference thereto. And any such district so validated or legalized shall be permitted to continue its operations in accordance with the provisions of this act with like effect as if said district had been originally organized under the provisions hereof, and as if said acts, proceedings or things had been had or done by it under the provisions of this act, it being the intention hereby to enable and permit such validated or legalized district to continue and complete its operations with like force and effect as if such district had been organized and had proceeded under the provisions of this act. [L. '11, p. 45, § 50.]

CHAPTER X.**PUBLIC WATERWAYS.****§ 9777. [8212-1.] Public Waterway District—Improvement by County.**

Whenever in any county of this state the owners of lands bordering upon or accessible to any navigable water shall desire to improve their said lands, hereinafter designated as the “district,” by the construction of a new public waterway, or the deepening or enlargement of an existing public waterway, for the floatage of vessels and the drainage of swamp and overflowed lands, and the proposed improvement will increase the public revenues and be of other public benefit, they may present the plan of such proposed waterway to the board of county commissioners of such county, hereinafter designated the “board,” and have the same acted upon as provided in this act. [L. '11, p. 64, § 1.]

§ 9778. [8212-2.] Accessible Lands.

Lands shall be deemed accessible to such waterway when by reason of their nearness to the same their value will be materially increased by the construction or deepening or widening of such waterway. [L. '11, p. 64, § 2.]

§ 9779. [8212-3.] Petition—Signatures—Map—Evidence—Hearing.

The plan of such proposed waterway shall be presented to the board by a written petition of owners of lands which it is represented will be improved by the construction, deepening or widening of such waterway; and such petition shall be signed by the owners of thirty-five per cent or more of the area of lands in the district, and shall be verified by one or

more of the petitioners to the effect that the signatures attached are the genuine signatures of the persons or corporations signing the same. Each petitioner shall add a description of the lands he owns. If petitioners are unmarried persons they shall so state. If lands are owned by married persons, husband and wife shall join in the petition. If the petitioner is a corporation, the signature shall be accompanied by a certified copy of a resolution of the board of directors or trustees of the corporation authorizing the person signing the petition for the corporation to execute it. If lands included in the petition are owned by minors, insane persons, or other persons under guardianship in this state, the petition may be signed by the guardians of such persons: Provided, that the signature be accompanied by a certified copy of an order of the superior court having the guardianship of such person in charge, authorizing the guardian to sign the petition. A petition may consist of one or more separate papers or sheets which are identified with the subject matter.

The petitioners shall file with the board, with their petition, a map of the lands in the district and a statement showing each separate ownership of lands as shown by the public records of the county, and their location in the county, with the names of the owners as shown by such records, and the location of the proposed waterway if a new waterway is to be constructed. If an existing waterway is to be deepened the map shall show its location, and if it is to be widened the map shall show its location and the extent to which it is to be widened. With the petition there shall also be presented satisfactory evidence from the real property records of the county that the petitioners are severally the owners in fee simple of their respective tracts of land, and that all taxes and assessments due thereon are paid. If it is proposed that any lands in the district shall be filled with the material dug or dredged from such waterway, the petition shall so state, and the map of the district and plan of the improvement shall show the location, depth and yardage of such fill. The petition may also fix the price per cubic yard at which such fill shall be charged to the land filled, which charge shall be added to the assessment for the improvement to be made upon such lands and be paid as a part thereof. If the price of filling is not fixed by the petition it may be fixed by the board.

At any time after the filing of such petition one or more of the petitioners may file and record in the office of the auditor of the county, notice of the pendency of the proceeding, describing the boundaries of the proposed district, and from the time of such filing all persons shall be deemed to have notice of the pendency of the proceeding and be bound thereby. Upon the hearing upon such petition, hereinafter provided, if the same be denied any person interested may file in the office of said county auditor a certified copy of the order denying the same, whereupon the auditor shall enter the discharge of the notice of the pendency of the proceeding on the margin of the record thereof. And the like discharge may be filed whenever the proceeding is terminated for any other reason. [L. '11, p. 65, § 3.]

§ 9780. [8212-4.] Petitioner to File Bond—Costs.

Said petitioners shall at the time of filing their petition with the board, file a bond executed by one or more of their number as principals, and in behalf of all, and by a surety corporation authorized to become surety upon public bonds in this state, which bond shall run to the state of Washington as obligee and be in the sum of five hundred dollars, conditioned that they will pay all costs of the proceeding in case for any reason the petition shall not be granted, or in case no fund shall thereafter be created for the payment of the expense attending said proposed waterway improvement. And said petitioners shall, from time to time as the board shall estimate and order, pay the costs and expenses of such proceeding. [L. '11, p. 66, § 4.]

§ 9781. [8212-5.] Hearing—Dismissal—Notice—Objections.

Said petition, after the filing thereof, shall be taken up and considered by the board at the next regular or special meeting thereof, or as soon thereafter as may be convenient, and if the petition be defective in any particular it may be amended and an adjournment of the matter may be had to permit of such amendment, for a time not exceeding thirty days. If the petition be defective and be not sufficiently amended within the adjournment taken, it shall be dismissed. But if such petition be in fact sufficient, or if by amendment it be made sufficient, it shall be the duty of the board to enter an order setting a time for a public hearing thereon within thirty days from the date of such order, and directing the clerk of the board to give notice of the time and place of such hearing in the official newspaper of the county by publication therein at least once each week for three successive weeks before the time of hearing; and in case there be no such official newspaper, then in some newspaper of general circulation in said county. Such notice shall be addressed to the owners of land not petitioning, as shown by the petition or as may be ascertained to be the fact, and to all other persons known and unknown having or claiming an interest in the lands in the district, and shall state the pendency of the proceeding, its object, the names of the signers of the petition, the number of acres of land they claim to own, the whole number of acres proposed to be improved, the boundaries of the lands to be included in the improvement district, and the time and place of hearing. And notice shall also be given that at the time and place named, or at such time as the same may be adjourned to, the board will consider the petition under the provisions of this act, and will hear all objections offered by interested parties and grant or refuse the petition as it may be advised. The clerk of the board shall keep a record of all orders, hearings and proceedings of the board in reference to such waterway district in a separate bound book, designated as the record of the proceedings as to such district. [L. '11, p. 67, § 5.]

§ 9782. [8212-6.] Consent of Owner—Findings—Decree.

At the time and place prescribed in the said notice any owner of land within said proposed improvement district may file with the board his written consent to the proposed improvement, and he shall then be

considered as a petitioner; and if the owners of more than one-half of the lands within the district, including the lands represented by the petition, shall assent to the prayer of said petition, the board shall then proceed to hear and consider any objections which may have been filed at that or any previous time, and may adjourn such hearing from day to day. If the board after full hearing on the merits of the proposed waterway shall be satisfied that the same will be of benefit to the public interests, and that private benefit will result to the lands within the district sufficient to equal the cost of the proposed improvement, they may make their findings accordingly, and declare their intention to establish the waterway district under the name of the "—— Waterway District" and make the improvement as prayed for; but if the owners of less than one-half of the lands in the district shall assent to the creation thereof and the making of the proposed improvement, the board shall deny the petition and the proceeding shall be dismissed. [L. '11, p. 68, § 6.]

§ 9783. [8212-7.] Right to Sue and be Sued.

Upon the entry of an order creating such waterway district by the board, it shall have power to perform all the duties and exercise all of the authority conferred upon it by this act, and shall have the right to sue and be sued in all matters pertaining to such district as the representative thereof, in the same manner and to the same extent as in all other county affairs. But such district shall bear all the expenses of such action on the part of the board, and the county shall be at no expense or charge therefor. [L. '11, p. 68, § 7.]

§ 9784. [8212-8.] Right of Eminent Domain.

Said board shall have the right of eminent domain for the acquisition of lands necessary to the construction or widening of the proposed waterway, and may cause all necessary lands to be condemned and appropriated or damaged for the use of said waterway, and make just compensation therefor. The private property of the state, the county, and other public or quasi-public corporations (except incorporated cities and towns), and of private corporations, shall be subject to the same rights of eminent domain at the suit of said board as the property of private individuals. [L. '11 p. 68, § 8.]

§ 9785. [8212-9.] Bridging Part of Cost.

Whenever in aid of the construction or widening of any such waterway it shall be necessary to cross or disturb any existing public highway or railroad, the cost of bridging the waterway or otherwise substantially continuing the highway or railroad may be ascertained and paid as a part of the cost of the improvement if such cost is not otherwise provided for. [L. '11, p. 69, § 9.]

§ 9786. [8212-10.] Order to Condemn.

Whenever the said board shall desire to condemn and acquire land, or damage lands or property for any purpose authorized by this act,

said board shall make an order therefor wherein it shall be provided that such land or damages shall be paid for wholly by special assessment upon the property within said waterway district, and the proceeding thereafter shall be as herein specified. [L. '11, p. 69, § 10.]

§ 9787. [8212-11.] Compensation Ascertained by Jury or Court.

The board shall file a petition, verified by its chairman and signed by the prosecuting attorney, in the superior court of the county, praying that the property described may be taken or damaged for the purpose specified and that compensation therefor be ascertained by a jury or by the court in case a jury be waived. Such petition shall allege the creation of the waterway district and contain a copy of the order directing the proceeding, a reasonably accurate description of the lots or parcels of land or other property which will be taken or damaged, and the names of the owners and occupants of said lands and of persons having any interest therein so far as known to the said board, or as appears from the records in the office of the county auditor. [L. '11 p. 69, § 11.]

§ 9788. [8212-12.] Summons Issued and Served.

Upon the filing of the petition aforesaid a summons returnable as summons in other civil actions, shall be issued and served upon the persons made parties defendant, together with a copy of the petition, as in other civil actions; and in case any of the defendants are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon nonresident or unknown defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served. [L. '11, p. 69, § 12.]

§ 9789. [8212-13.] Service on Commissioner of Public Lands—Attorney General—Duties.

In case the land or other property sought to be taken or damaged is state land, the summons and copy of petition shall be served upon the commissioner of public lands; if it is county land it shall be served upon the county auditor, and if school land, upon the county auditor and the chairman of the board of directors of the school district. Service upon other parties defendant, public or private, shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions. If the state is made a defendant the attorney general shall represent it. If the county is a defendant the court shall appoint an attorney to represent it at all stages of the proceedings, and may allow him compensation for his services as costs of the proceeding. [L. '11, p. 70, § 13.]

§ 9790. [8212-14.] Jury to Ascertain Compensation.

Upon the return of said summons, or as soon thereafter as the business of the court will permit, the said court shall proceed to the hearing

of such petition and shall adjudicate whether the proposed condemnation is for a public use, and if its judgment is that the proposed use is public, it shall impanel a jury to ascertain the just compensation to be paid for the lands or property taken or damaged, unless a jury be waived; but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as to the separate compensation or damages to be paid to any one or more of such defendants or parties in interest. Should the court determine that the proposed use is not public, it shall dismiss the proceeding. [L. '11, p. 70, § 14.]

§ 9791. [8212-15.] File Statement of Interest.

The jury or court shall also ascertain the just compensation to be paid to any person found to have an interest in any lot or parcel of land or property which may be taken or damaged for such improvement, whether or not such person's name or such lot or parcel of land or other property is mentioned or described in said petition: Provided, that such person shall first be admitted as a party defendant to such suit by such court and shall file a statement of his interest in, and a description of, the lot or parcel of land or other property in respect to which he claims compensation. [L. '11, p. 71, § 15.]

§ 9792. [8212-16.] Jury View Property.

The court may upon motion of the petitioners, or of any defendant, direct that the jury under the charge of an officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged, shall view the lands or property taken or damaged for the proposed improvement. [L. '11, p. 71, § 16.]

§ 9793. [8212-17.] Damage to Building.

If there be any building standing in whole or in part upon any land to be taken, the jury or court shall add to the finding of the value of the land taken, the value or damage to such building as the case may require. If the entire building is taken, or if it is damaged so that it cannot be readjusted to premises of the owner, then the measure of damages shall include the fair market value of the building. If part of the building is taken, or it is damaged but can be readjusted or replaced on premises of the owner, then the measure of damages shall be the cost of readjusting or moving the building or part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [L. '11, p. 71, § 17.]

§ 9794. [8212-18.] Damages as Interest Appears—Interpleader.

If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damage done to each of such parties or interests may be separately found by the jury or court on the written request of any party. And in making such findings the jury or court shall first find and set forth the total amount of the damage to said lands and buildings and all premises therein, estimating the same as an entire estate and as if the same were

the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same in proportion to their several interests and claims. But no delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case the jury or court shall ascertain the entire compensation or damage that should be paid for the property and the court may thereafter require adverse claimants to interplead so as to fully determine their rights and interests in the compensation so ascertained, and may make such order as may be necessary in regard to the deposit or payment of such compensation and the division thereof. [L. '11, p. 71, § 18.]

§ 9795. [8212-19.] Procedure Same as Civil Action.

Upon the filing of the findings of the jury or court, the proceedings of the court regarding new trial and the entry of judgment thereon, shall be the same as in other civil actions, and the judgment shall be such as the nature of the case may require. The final judgment of the court shall be that the lands and property taken and damaged shall, upon payment of the sums awarded, vest in the county as and for a public waterway. The court shall continue or adjourn the case from time to time as to all defendants named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication be made at any time, and upon such defendants being brought in the court may impanel a jury to ascertain the compensation so to be made to such defendants for property taken or damaged, or may proceed without a jury if none be demanded, and like proceedings shall be had for such purpose as are herein provided. [L. '11, p. 72, § 19.]

§ 9796. [8212-20.] Substitute Defendant.

The court shall have power at any time, upon proof that any defendant who has not been served with process has ceased to be an owner since the filing of such petition, to substitute the new owner as a defendant, and after due service of the summons and petition upon him proceed as though he had been a party in the first instance; and the court may upon any finding of the jury, or at any time during the course of the proceedings, enter every such order, rule, judgment or decree as the nature of the case may require. [L. '11, p. 73, § 20.]

§ 9797. [8212-21.] Guardian ad Litem.

When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant, insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or insane or distracted person to appear and defend for him, her or them; and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted

person in such property, or the compensation which shall be awarded therefor. [L. '11, p. 73, § 21.]

§ 9798. [8212-22.] Findings to State Damage.

The compensation to be ascertained by the jury or court shall be irrespective of any benefit from the improvement proposed, and the finding shall state separately the value of land taken from any tract and the damage, if any, to remaining land by reason of the severance. [L. '11, p. 73, § 22.]

§ 9799. [8212-23.] Judgment Final.

Any final judgment rendered by said court upon the findings of the court or a jury, shall be the lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases: Provided, that in case any defendant recovers no award, no costs shall be taxed. Such judgment shall be final and conclusive as to the damages caused by such improvement, unless appealed from, and no appeal from the same shall delay proceedings under the order of said board if it shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs; but such board after making such payment into court shall be liable to such owner or owners, or parties interested, for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by the board, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property, accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court and final judgment may be rendered in the superior court as in other cases. [L. '11, p. 73, § 23.]

§ 9800. [8212-24.] Order to Take Possession of Property.

The court upon proof that the judgment, together with costs, has been paid to the person entitled thereto, or has been paid into court, shall enter an order that the board shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so made or paid into court as aforesaid, and thereupon the title to any property so taken shall be vested in fee simple in the public as a water highway. [L. '11, p. 74, § 24.]

§ 9801. [8212-25.] Assessment for Damages—Interest—Expenses.

Said board shall, upon the entry of the condemnation judgment, file in the same proceeding a supplementary petition, praying the court that an assessment be made upon the lands in the district for the purpose of

raising an amount necessary to pay the compensation and damages awarded for the property taken or damaged, with costs of the proceedings, and for the estimated cost of the proposed improvement; and the court shall thereupon appoint three competent disinterested persons as commissioners to make such assessment. Said commissioners shall include in such assessment the compensation and damages awarded for the property taken or damaged, with legal interest from the date of entry of the judgment, and with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceedings was referred to them, together with the probable further costs and expenses of the proceeding, including therein the estimated cost of making and collecting such assessment. The petitioners for the improvement shall be entitled to have included in the costs of the proceeding, and repaid to them, such reasonable sums as they may have expended in preparing the maps and plans of the improvement and procuring the names of land owners for filing with the petition. Such expenditures to be approved and allowed by the court. [L. '11, p. 74, § 25.]

§ 9802.. [8212-26.] Commissioners' Compensation.

Said commissioners, before entering upon their duties, shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to the law. Every commissioner shall receive compensation at the rate of five dollars per day for each day actually spent in making the assessment herein provided for, upon his filing in the proceeding a verified statement showing the number of days he has actually spent therein; and upon the approval of said statement by the judge of the court in which the proceeding is pending, the board shall issue a warrant in the amount so approved, upon the special fund created to pay the awards and costs of said proceeding; and the fees of such commissioners so paid, and all expenses returned by them and allowed by the court shall be included in the cost and expense of such proceeding. [L. '11, p. 75, § 26.]

§ 9803. [8212-27.] Assessment—Apportionment.

It shall be the duty of such commissioners to examine the lands in the district and to apportion and assess the amount of the judgment, interest and costs as hereinbefore defined, of the condemnation proceeding, and of the estimated cost of the proposed improvement, and of the price of any fill made with the material dug or dredged from such waterway, upon the several lots, blocks, tracts and parcels of land in said district, in the proportion in which they will be severally benefited; which assessment shall be a proportionate charge upon each square foot of land contained in each separate lot, block, tract or parcel of land. [L. '11, p. 75, § 27.]

§ 9804. [8212-28.] Roll of Owners.

The commissioners shall make or cause to be made an assessment-roll in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land or other property,

and the amounts assessed thereon as special benefits thereto, specifying separately the benefits from the opening of the waterway, for construction, and for fill if any, and certify such assessment-roll to the court before which said proceeding is pending, within sixty days after the date of the order referring said proceeding to them, or within such extension of said period as shall be allowed by the court. In determining the benefit to be assessed upon any lot or parcel of land for the opening of the waterway, the commissioners shall ascertain from the finding of the court or jury whether or not it is remaining land after the severance of land taken from an original lot or parcel for right of way of such proposed waterway, and the damage awarded to such remaining land, if any, allowed by reason of the severance; and for such opening shall assess as benefits to such remaining land only the excess of the benefit accruing thereto over the damage awarded by the finding. [L. '11, p. 76, § 28.]

§ 9805. [8212-29.] Court to Order Hearing—Notice.

Upon its completion the commissioners shall return their assessment-roll into court, and thereupon the court shall make an order setting a time for the hearing thereon before the court, which day shall be at least thirty days after the entry of such order. The commissioners shall give notice of such assessment and of the day fixed by the court for the hearing thereon in the following manner:

(1) They shall at least twenty days prior to the date fixed for the hearing on said roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

“(Title of cause.) To —: Pursuant to an order of the superior court of the state of Washington, in and for the county of —, there will be a hearing in the above-entitled cause on — at—, upon the assessment-roll prepared by the commissioners heretofore appointed by said court to assess the property specially benefited by the (here describe nature of improvement); and you are hereby required if you desire to make any objection to said assessment-roll, to file your objections to the same before the date herein fixed for the hearing upon said roll, a description of your property and the amount assessed against it for the aforesaid improvement is as follows: (Description of property and amount assessed against it.)

— —,
 — —,
 — —,
 Commissioners.”

(2) They shall cause at least twenty days' notice to be given of the hearing, when a daily newspaper is published in such county, by publishing the same in at least five successive issues of said paper; or if no daily newspaper is published in said county and a weekly newspaper is published therein, then in each issue of such weekly newspaper for two successive weeks. Such notice so required to be published may be substantially as follows:

“(Title of cause.) Special Assessment Notice: Notice is hereby given to all persons interested, that an assessment-roll has been filed in the above-entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that said roll has been set down for hearing on the — day of — at —. The boundaries of said assessment district are substantially as follows: (here insert an approximate description of the assessment district.) All persons desiring to object to said assessment-roll are required to file their objections before said date fixed for the hearing upon said roll, and appear on the day fixed for the hearing before said court.

— —,
 — —,
 — —,
 Commissioners.”

[L. '11, p. 76, § 29.]

§ 9806. [8212-30.] Affidavits Filed.

On or before the day fixed for the hearing, the affidavit of one or more of the commissioners shall be filed in said court showing the mailing of the notices above prescribed, and an affidavit of the publisher of the newspaper showing the publication of notice, with a copy of the published notice attached, which affidavit shall be received as prima facie proof of the giving of notice as herein required. [L. '11, p. 78, § 30.]

§ 9807. [8212-31.] Court Order New Notice.

If twenty days shall not have elapsed between the first publication of such notice and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter until final judgment on the assessments, and if the notice given shall prove invalid or insufficient the court shall order new notice to be given. [L. '11, p. 78, § 31.]

§ 9808. [8212-32.] Hearing Objections—Findings.

Any person interested in any property assessed and desiring to object to the assessment thereon, shall file his objections to such report at any time before the day set for hearing said roll, and serve a copy thereof upon the prosecuting attorney. As to all property to the assessment upon which no objections are filed and served, as herein provided, default may be entered and the assessment confirmed by the court. On the hearing of objections the report of the commissioners shall be competent evidence to support the assessment, but either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law tried by the court without a jury; and if it shall appear that the property of the objector is assessed more or less than it will be benefited, or more or less than its proportionate share of the cost of the condemnation and improvement, the court shall so find, and it shall also find the amount in which said property ought to be assessed and correct the assessment

accordingly. Judgment shall be entered confirming the assessment-roll as originally filed or as corrected, as the case may require. [L. '11, p. 78, § 32.]

§ 9809. [8212-33.] Roll may be Recast.

The court before which any such proceeding may be pending shall have authority at any time before final judgment to modify, alter, change, annul or confirm any assessment-roll returned as aforesaid, or cause any such assessment-roll to be recast by the same commissioners whenever it shall be necessary for the obtainment of justice; or it may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such condemnation and improvement according to the principles of this act, and may from time to time, as may be necessary, continue the proceeding for that purpose as to the whole or any part of the premises. [L. '11, p. 79, § 33.]

§ 9810. [8212-34.] Appeal shall not Invalidate.

The judgment of the court affirming the assessment-roll shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a proportionate lien upon each square foot of the property assessed from the date of entry until payment shall be made. [L. '11, p. 79, § 34.]

§ 9811. [8212-35.] Interest on Assessments.

The clerk of the court in which such judgment is rendered shall certify a copy of the assessment-roll as confirmed, and of the judgment confirming the same to the treasurer of the county, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is entered: Provided, that if upon such appeal the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment-roll shall be sufficient warrant to the county treasurer to collect the assessments therein specified in the manner hereinafter provided. [L. '11, p. 79, § 35.]

§ 9812. [8212-36.] Treasurer to Publish Notice.

The treasurer receiving such certified copy of the assessment-roll and judgment shall immediately give notice thereof by publishing such notice at least once in the official newspaper or newspapers of such county, if such newspaper or newspapers there be; and if there be no such official newspaper, then by publishing such notice in some newspaper of

general circulation in the county. Such notice may be in substantially the following form:

“SPECIAL ASSESSMENT NOTICE.

Public notice is hereby given that the superior court of — county, state of Washington, has rendered judgment for a special assessment upon property benefited by the following improvement (herein insert the character and location of the improvement in general terms) as will more fully appear from the certified copy of the assessment-roll on file in my office, and that the undersigned is authorized to collect such assessments. All persons interested are hereby notified that they can pay the amounts assessed, or any part thereof, without interest, at my office (here insert location of office) within sixty days from the date hereof.

Dated this — day of —, A. D. 191—.

_____,
Treasurer of — county, Washington.”

[L. '11, p. 80, § 36.]

§ 9813. [8212-37.] Payment.

The owner of any land charged with an assessment under this act, may discharge the same from all liability for the cost of such condemnation and improvement by paying the entire assessment charged against his land, without interest, within the time fixed by the notice of the county treasurer for the payment thereof; or within said time he may pay a part of such assessment and allow the remainder to continue as an assessment upon his land to be collected and paid as hereinafter provided; or within said time he may pay the entire assessment per square foot upon any part of his land, providing that he shall when paying such partial assessment give to the treasurer a description of the tract paid for. [L. '11, p. 80, § 37.]

§ 9814. [8212-38.] Treasurer to Note Payment.

When any assessment shall be paid either in full or in part only, within the time for payment without interest fixed by his notice, the treasurer shall note the fact of such payment opposite the assessment. [L. '11, p. 81, § 38.]

§ 9815. [8212-39.] Installments—Collection.

Immediately after the expiration of the time fixed by his notice for payment of assessments without interest, the treasurer shall divide the several assessments which remain unpaid in whole or in part into ten equal amounts or installments, as near as may be, without fractional cents, and enter said installments upon the roll opposite the several assessments, numbering the same from one (1) to ten (10) successively. And thereafter said treasurer shall annually for ten years, before the time fixed by law for the collection of state and county taxes, add one of the said assessment installments with interest for one year from the expiration of the time for payment without interest, or of the anniversary thereof, at the rate of seven per cent per annum on the entire unpaid assessment, to the tax levied upon the property assessed, where said tax appears upon the county

tax-roll, and collect said installment and interest, without reduction of percentage for prepayment, at the same time and in the same manner as state and county taxes are collected. And after delinquency said installments and interest shall be subject to the same charges for increased interest and penalties as are other delinquent taxes. But no tax sale of lands assessed under this act shall discharge the same from the lien of any unpaid installments of the assessment against it until all installments and interest are fully paid. [L. '11, p. 81, § 39.]

§ 9816. [8212-40.] Assessment Payments Noted.

As each assessment installment is paid the treasurer shall note the payment thereof in the proper place upon the assessment-roll. [L. '11, p. 82, § 40.]

§ 9817. [8212-41.] May Discharge Payments.

The owner of any lands assessed under this act may at any time after the time fixed by the treasurer's notice for payment without interest, discharge his lands from the unpaid assessment by paying the principal of all installments unpaid with interest thereon at the rate of seven per cent per annum to the next anniversary of the time fixed as aforesaid; or he may pay one or more installments, with like interest, beginning with installment No. 10 and continuing in the inverse numerical order of installments. The successor in title to any part of his lands may have the proportionate assessment segregated on the roll and charged to such part upon his producing to the treasurer his recorded deed to such part. [L. '11, p. 82, § 41.]

§ 9818. [8212-42.] Seven Per Cent Interest.

The last installment of any assessment paid shall include interest thereon at the rate of seven per cent per annum to the actual date of payment. [L. '11, p. 82, § 42.]

§ 9819. [8212-43.] Provision for Public Use.

Should any of the lands assessed under this act be taken for or dedicated to public use, for highway or any other public purpose, before the taking or dedication shall be complete or take effect there shall be paid to the county treasurer a sum equal to the principal of the unpaid assessment upon said land at its proportionate rate per square foot, with interest thereon for one year at seven per cent; and the treasurer shall credit the principal sum paid to the unpaid installments upon the tract as originally assessed. [L. '11, p. 82, § 43.]

§ 9820. [8212-44.] Treasurer to Make Report.

Immediately after expiration of the time fixed by the treasurer for the payment of assessments levied under this act, he shall report to the board in writing the sum collected by him and in his hands to the credit of the assessment-roll; and thereafter and on or before the first days of January and July in each year he shall make written reports to said board of the sums collected by him upon said roll, stating in detail the amount of principal, interest and penalty so collected, the amount

of principal remaining uncollected, and also, in detail, the principal and interest paid out by him under authority of the board, and the balance in his hands to the credit of the roll. [L. '11, p. 82, § 44.]

§ 9821. [8212-45.] Bonds may be Issued.

Should the owners of any lands assessed to pay for an improvement contemplated by this act, fail to pay the assessments thereon in full on or before the day fixed by the treasurer's notice as the time for payment without interest, the board shall provide and issue bonds of the district to the total amount of the unpaid assessments, which bonds may either be issued to persons contracting to perform the work of making the improvement, or exchange with them for warrants; or be issued in exchange for work or materials; or they may be sold outright as hereinafter provided. [L. '11, p. 83, § 45.]

§ 9822. [8212-46.] Interest on Bonds.

Such bonds shall be issued pursuant to an order made by the board and by their terms shall be made payable on or before a date not to exceed ten years from and after the date of their issue, which latter date shall also be fixed by such order. They shall bear interest at the rate of seven per cent per annum, which interest shall be payable semi-annually at periods named; shall have attached thereto interest coupons for each interest payment; shall be of such denomination as shall be provided in the order directing the issue, but not less than one hundred dollars nor more than one thousand dollars; shall be numbered from one upward consecutively and each bond shall be signed by the president of the board and attested by its clerk: Provided, however, that said coupons may, in lieu of being so signed, have printed thereon facsimile signatures of said officers. Each bond shall in the body thereof refer to the improvement to pay for which the same is issued; shall provide that the principal sum therein named and the interest thereon shall be payable out of the fund created for the payment of the cost and expense of said improvement, and not otherwise; and shall not be issued in an amount which, together with the assessments already paid, will exceed the cost and expense of the said condemnation and improvement. [L. '11, p. 83, § 46.]

§ 9823. [8212-47.] Par Value Maintained.

Said bonds, whether sold or exchanged, shall be disposed of for not less than their par value and accrued interest. [L. '11, p. 84, § 47.]

§ 9824. [8212-48.] Advertise for Bids.

Before making any sale of such bonds the board shall advertise the sale and invite sealed bids therefor, by publication in the county official newspaper at least once, and in such other manner as it sees fit, for a period of thirty days. At the time and place fixed for receiving bids the board shall open all bids presented and may either award the bonds to the highest bidder or reject all bids. Delivery of the bonds and payment therefor may be as required by the board. The purchaser of any such bonds shall pay the money due therefor to the county treasurer, who shall place it in the district fund. [L. '11, p. 84, § 48.]

§ 9825. [8212-49.] Treasurer to Call Bonds for Payment.

The treasurer shall pay the interest on the bonds authorized to be issued by this act, on presentation of matured coupons therefor, out of the funds of the district in his hands. Whenever there shall be sufficient money in any such fund (not less than one thousand dollars) over and above sufficient for the payment of matured interest on all outstanding bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds in their numerical order: Provided, that the said call for bonds shall be made by publication in the official newspaper of the county if there be one, or otherwise in some newspaper of general circulation in the county, within five days after the semi-annual interest period, and shall state that bonds numbered — (giving the serial numbers of the bonds called) will be paid on presentation; and that after a date named, not more than fifteen days thereafter, interest on the bonds called shall cease. [L. '11, p. 84, § 49.]

§ 9826. [8212-50.] Claim Limited.

Neither the holder nor the owner of any bond issued under the authority of this act shall have any claim therefor against any person, body or corporation, except from the special assessment made for the improvement for which such bond was issued; but his remedy in case of nonpayment shall be confined to the enforcement of such assessment. A copy of this section shall be plainly written, printed or engraved on each bond so issued. [L. '11, p. 84, § 50.]

§ 9827. [8212-51.] May be Reassessed.

In all cases of assessments for improvements under this act, wherein such assessments shall have failed to be valid in whole or in part for want of form or insufficiency, informality or irregularity, or nonconformance with the provisions of this act, the board is hereby authorized to cause such assessments to be reassessed and to enforce their collection in accordance herewith. [L. '11, p. 85, § 51.]

§ 9828. [8212-52.] Construction—Bonds—Claims—Deposit.

After the confirmation of the assessment-roll of any improvement district provided for herein, the board shall proceed at once with the construction of the improvement, and in carrying on such construction it shall have full charge and management thereof and the power to employ such assistants as it may deem necessary, and purchase all material required in such construction; and it shall have power to let the whole or any part of the work of said improvement to the lowest and best bidder therefor, after public advertisement and call for bids; and in case of such letting of a contract it shall have the power also to enter into all necessary agreements with the contractor in the premises: Provided, that in the case of the letting of a contract the board shall require the contractor to give a bond in the amount of the contract price, with sureties to be approved by the board and running to the board as obligee therein, conditioned for the faithful and accurate performance of his contract by said contractor, and that he will pay, or cause to be paid, all just claims of all persons performing labor upon or rendering ser-

vices in doing said work, or furnishing materials, merchandise or provisions used by said contractor in the construction of said improvement. Said bond shall be filed and recorded in the office of the auditor of the county and every subcontractor on any such work shall file and record a like bond in the full amount of his subcontract. Unless otherwise paid their claims for labor or services, materials, merchandise or provisions, the claimants may have recourse by suit upon such bond in their own names: Provided, that no such claim or suit shall be maintained unless the persons making said claim shall within thirty days after the completion of said improvement, file their claims, duly verified, to the effect that the amounts thereof are just and due and are unpaid, with the clerk of the board. Each bidder for a contract to be let under this section shall deliver with his bid a check for five per cent of the amount of the bid, drawn upon a bank in this state and certified by the bank, as surety to the board that the bidder will enter into the contract with the board. The checks of unsuccessful bidders will be returned to them when an award of the contract has been made by the board. [L. '11, p. 85, § 52.]

§ 9829. [8212-53.] Payment in Installments.

During the construction of the improvement said board shall have the right to allow payment therefor to contractors in installments as the work progresses, in proportion to the amount of work completed: Provided, that no such allowance or payment shall be made for exceeding seventy-five per cent of the proportionate amount of the work completed; and twenty-five per cent of the contract price shall be reserved at all times by said board until such work is fully completed, and shall not be paid until thirty days have expired after such completion. Upon completion of the work and the production of satisfactory evidence to the board that all just claims for labor, materials, goods, wares, merchandise and provisions furnished to the contractor have been paid, the board shall accept the improvement and pay the contract price therefor. [L. '11, p. 86, § 53.]

§ 9830. [8212-54.] Form of Warrants.

The indebtedness of any such district on contracts, or upon employment or for supplies, shall be paid by warrants on the district fund only, to be issued by the board upon allowed written claims. Such warrants shall be in form the same as county warrants, or as nearly the same as may be practicable; shall draw the legal rate of interest from the date of their presentation to the county treasury for payment, and shall be signed by the chairman and attested by the clerk: Provided, that no warrants shall be issued in payment of any indebtedness of such district for less than the face or par value. [L. '11, p. 86, § 54.]

§ 9831. [8212-55.] Warrants Presented.

All warrants issued under the previous section of this act may be presented by the holders thereof to the county treasurer, who shall pay them or indorse thereon the date of presentation for payment and if the same are not paid, and the reason for their nonpayment; and no war-

rant shall draw interest until it is so presented and indorsed by the county treasurer. It shall be the duty of the treasurer from time to time, when he has sufficient funds in his hands for the purpose, to give notice to warrant holders to present their warrants for payment; such notice to be given by advertisement in the county newspaper. And thirty days after the first publication of said notice the warrants called cease to bear interest. Said notice shall be published once each week for two weeks consecutively, and such warrants shall be called and paid in the order of their indorsement. [L. '11, p. 87, § 55.]

§ 9832. [8212-56.] Rights of Municipal Corporations.

State, school, county, school district, and other lands belonging to other public corporations which will be benefited by the construction, deepening or widening of any such waterway, and which are not devoted to public use, shall be subject to the provisions of this act, and the owners thereof by and through the proper authorities, shall be made parties in all proceedings affecting said lands, and shall have the same rights and be liable to the same right of eminent domain as the lands of private persons or corporations. [L. '11, p. 87, § 56.]

§ 9833. [8212-57.] Assessment of Lands.

Lands belonging to the state, and school, county, school district and other lands belonging to public corporations and which are not devoted to public use, which are benefited by any improvement instituted under the provisions of this act, shall be assessed in the same manner as lands of private persons and corporations, and the assessment shall be paid by the proper authorities. [L. '11, p. 87, § 57.]

§ 9834. [8212-58.] Right of Appeal.

Every defendant feeling aggrieved by any condemnation judgment for compensation or damages, or by any judgment confirming an assessment upon land for benefits under this act, may appeal to the supreme court of the state from such judgments within thirty days after the entry thereof. An appeal from a condemnation judgment may bring before the supreme court either the legality of the proceeding as a taking for a public use, or the justness of the amount of compensation or damages awarded to the appellant; but an appeal from a judgment confirming an assessment of benefits shall bring before the supreme court only the justness of the assessment against the property of the appellant. Two or more defendants may join in an appeal. The bill of exceptions or statement of facts upon such appeals shall contain only such portions of the evidence in the case as relates to the property of the appellants. Otherwise than as provided in this section such appeals shall be taken as provided by law in appeals to the supreme court from final judgments in actions at law. [L. '11, p. 87, § 58.]

§ 9835. [8212-59.] Provision for Payment.

Any defendant in a condemnation proceeding under this act, whose remaining land, or whose other lands in the district, shall be assessed for benefits arising from the improvement, may pay his assessments in full,

if they be less than his condemnation judgment, at or before the time fixed by the treasurer for the payment of assessments without interest, by satisfying his judgment upon the judgment docket and producing to the treasurer the certificate of the county clerk that the judgment has been satisfied. And if his assessments be greater than his condemnation judgments he may, within the same time, pay his assessments to the extent of his judgment by the like satisfaction and the like production of the clerk's certificate to the treasurer. In each case the treasurer shall note the payment and the manner thereof on the assessment-roll and report the same to the board. [L. '11, p. 88, § 59.]

§ 9836. [8212-60.] Providing for Filling Property.

At any time before the completion of excavations required for the construction, deepening or widening of a waterway under this act, when there will be surplus material dug or dredged from such waterway, any owner of land within the district, for the filling of whose land no provision has theretofore been made, may have such surplus material delivered upon his land for filling purposes upon paying the cost of such delivery in a sum to be fixed by the board. The sum so fixed shall be paid to the treasurer at such time and in such manner as the board may prescribe, and shall be credited to the district fund. [L. '11, p. 88, § 60.]

§ 9837. [8212-61.] Road Fund.

Should there be any money remaining in the district fund after the payment in full of all of the obligations of the district, it shall be transferred to and become a part of the road fund of the county. [L. '11, p. 89, § 61.]

§ 9838. [8212-62.] Uncalled Sums to Road Fund.

Should any sum of money paid into court as compensation or damages for land or property taken or damaged in any condemnation proceeding under this act be uncalled for for the period of two years, the county clerk shall satisfy the judgment therefor and pay the money in his hands to the treasurer for the road fund of the county. But upon application to the board of county commissioners within four years after such payment, the party entitled thereto shall be paid such money by the county without interest: Provided, that if any such party, being a natural person, was under legal disabilities when such money was paid to the treasurer, the time within which he or his legal representatives shall make application for the payment thereof shall not expire until one year after his death or the removal of his disabilities. [L. '11, p. 89, § 62.]

§ 9839. [8212-63.] Corporate Authority Control.

Every waterway constructed, deepened or widened under this act shall, from and after the completion thereof, be a public highway for vessels and an outlet for swamp or overflow water which may be drained into it from any lands in the district or tributary thereto, and shall be under the care and control of the board of county commissioners of the county as are other highways: Provided, that whenever any such waterway shall thereafter be included within the limits of any city or town,

the care and control thereof shall pass to the corporate authorities of such city or town. [L. '11, p. 89, § 63.]

§ 9840. [8212-64.] Concurrent Act.

This act shall not be held to be an exclusive method of constructing, deepening or widening such waterways, nor in conflict with any other method which may be provided by law. [L. '11, p. 89, § 64.]

§ 9841. [8212-65.] Fees.

The fees for the service of all process necessary to be served under the provisions of this act shall be the same as those for like services in other civil cases. [L. '11, p. 90, § 65.]

§ 9842. [8212-66.] Injunction.

The superior court may compel the performance of duties imposed by this act, and may on proper application therefor issue its mandatory injunction for such purpose. [L. '11, p. 90, § 66.]

CHAPTER XI.

REGULATION OF STEAM VESSELS, ETC.

Liens on boats and vessels: See supra, § 1182.

§ 9843. [8213.] Commissioner of Labor to Enforce.

The commissioner of labor shall be charged with the administration of the provisions of this act, shall employ the necessary inspectors to enable him to carry said provisions into effect, and shall exercise supervision over them in the performance of their duties. [L. '07, p. 425, § 1.]

See infra, § 10838, duties devolve upon director of labor and industries.

See infra, § 10893, commissioner of labor abolished.

"Act" in this and the following sections refers to this chapter.

Cited in 111 Wash. 246, 248.

The former pilotage law, Ballinger's Code, sections 3216—3243, applied to vessels propelled by steam as well as sailing vessels: State v. Ames, 47 Wash. 328, 92 Pac. 137.

The pilotage law, Ballinger's Code, sections 3216—3243, as amended by Laws of 1901, page 17, was not objectionable as indefinite or as prescribing different penalties for the same offense: State v. Ames, 47 Wash. 328, 92 Pac. 137.

§ 9844. [8214.] Inspection of Vessels—Investigation of Accidents.

The commissioner of labor shall annually, or oftener if he has good cause to believe it reasonable, inspect, or cause to be inspected, every steam vessel or other vessel operated by machinery engaged in carrying passengers for hire or towing for hire, except vessels which are subject to inspection under the laws of the United States, examine carefully her hull, boats and other equipment, examine her engine and boilers, ascertain how long it will be safe to use the same, determine the pressure of steam to be allowed and so regulate the fusible plugs, safety valves and steam-cocks as to insure safety, and he may require such changes, repairs and improvements to be adopted and used as he may deem expedient for the contemplated route. He shall also fix the number of passengers that may be transported. He shall also, whenever he deems it expedient, visit any vessel licensed under this act and examine into

her condition for the purpose of ascertaining whether or not any party thereon having a certificate from him has conformed to and obeyed the conditions of such certificate and the provisions of this act. The owner, master, pilot, captain or engineer of such vessel shall answer all reasonable questions, and shall give all the information in his or their power, in regard to said vessel, her machinery and the manner of managing the same. In case of damage by fire or explosion or by means of an electrical apparatus, he may investigate the cause thereof, and if found by him to have been occasioned by a violation of any of the provisions of this act, or of the orders, regulations and requirements issued by him, he shall so certify to the prosecuting attorney of the county where such violation occurred, together with the names of the persons guilty thereof and of the witnesses. [L. '07, p. 425, § 2.]

See notes to § 9843.

§ 9845. [8215.] Boiler Tests—Inspection of Launches.

The commissioner shall also test the boilers of all steam vessels, before the same shall be used, and at least once in every year thereafter. In subjecting to the hydrostatic test, boilers called and usually known under the designation of high pressure boilers, the hydrostatic pressure applied must be in proportion of one hundred and fifty pounds to the square inch to one hundred pounds to the square inch of the steam pressure allowed. And in subjecting to the hydrostatic test, that class of boilers usually designated and known as low pressure boilers, the commissioner shall allow as the working power of each new boiler, a pressure of only three-fourths the number of pounds to the square inch, to which it shall have been subjected by the hydrostatic test, and found to be sufficient therefor; but should said commissioner be of the opinion that such boiler, by reason of its construction or material will not safely allow so high a working pressure he may, for reasons specifically stated in his certificate, fix the working pressure of such boiler at less than three-fourths of said test pressure; and no boiler or pipe, or any of the connections therewith, shall be approved, which is made in whole or in part, of bad material, or is unsafe in its form, or dangerous from defective workmanship, age, use or other cause. In addition to the hydrostatic test as herein provided, the commissioner may cause a hammer test to be made and an internal examination of such boiler or boilers so tested, whenever deemed necessary. Any boiler having been in use ten years or more may be drilled at the bottom of shell or boiler, and also at such other points as the inspectors may direct to determine the thickness of such material at those points, and the general condition of such boiler or boilers at the time of inspection and the steam pressure allowed shall be determined by such ascertained thickness and general condition of the boiler. He shall also see that all connections to the said boiler or engines are of suitable material, size and construction; and that the boiler, machinery and appurtenances are such as may be employed with safety in the service to be performed. He shall also satisfy himself that the safety valves are of suitable dimensions and that the weights of the same are properly adjusted, so as to allow no greater pressure than the maximum amount prescribed by him; and that there is a sufficient number of gauge cocks, properly attached to the boiler, so as

to indicate the quantity of water therein; and suitable steam gauges to correctly show the amount of steam carried; and as to any other matter connected with such steam vessel or the machinery thereof, that to said commissioner shall seem necessary to the safety of her passengers and crew. And he shall make such inspection, examination and test of naphtha launches and electric launches and their apparatus and machinery, as will enable him to determine whether they can be safely used in navigation. [L. '07, p. 426, § 3.]

See notes to § 9843.

See *supra*, § 2401, manslaughter through reckless operation of engines and boilers.

§ 9846. [8216.] Certificate of Inspection.

The commissioner, if satisfied that such vessel is in all respects safe and conforms to the requirements of this act, shall make and subscribe duplicate certificates, setting forth the age of the vessel, the date of inspection, the name of the vessel, the name of the owner, the master, the number of licensed officers and crew which he deems necessary to manage the vessel with safety, the number of boats and life-preservers required, and the number of passengers that she can safely carry, and if a steam vessel, the age of the boiler, and the pressure of steam she is authorized to carry. One of such certificates shall be kept posted in some conspicuous place on the vessel to be designated by the commissioner in the certificate and the other copy shall be kept by the commissioner and by him recorded in a book to be kept for that purpose. If the commissioner refuses to grant a certificate of approval, he shall make a statement in writing, giving his reasons for such refusal, and deliver the same to the owner or master of the vessel. [L. '07, p. 427, § 4.]

See notes to § 9843.

§ 9847. [8217.] Number of Passengers.

No greater number of passengers shall be transported upon any licensed steam vessel or other vessel included within the provisions of this act, than the number allowed in the certificate of such vessel, under a penalty of ten dollars, to be paid by the master for each passenger in excess of the allowed number, unless special permission is first obtained from the commissioner under such precautions as he deems expedient. [L. '07, p. 428, § 5.]

See *supra*, § 2400, manslaughter causing death through overloading.

§ 9848. [8218.] Protection of Woodwork Against Fire.

All steamboats and other vessels to which this act is applicable, shall hereafter be so constructed that the woodwork about the boilers, chimneys, fire-boxes, cook-houses, stove and steam pipes, or any machinery or apparatus involving danger of fire, where such woodwork is exposed to ignition, shall be so shielded by some incombustible material, that the air may circulate freely between such material and woodwork or other ignitable substances, and before granting a certificate of inspection, the commissioner shall require that all other necessary provisions be made throughout such vessel, as he may judge expedient to guard against loss or damage by fire. [L. '07, p. 428, § 6.]

§ 9849. [8219.] Stairways and Gangways.

Every vessel engaged in carrying passengers, shall be provided with permanent stairways and other sufficient means convenient for passing from one deck to the other, with gangways large enough to allow persons freely to pass, which shall be open fore and aft of the length of the vessel, and to and along the guards; and whoever obstructs such gangways by freight or otherwise shall forfeit fifty dollars to the state of Washington for every such violation. [L. '07, p. 428, § 7.]

§ 9850. [8220.] Rules for Navigation of Vessels.

From and after the passage of this act, the following rules shall be observed in navigating all steam vessels when under steam, and all boats propelled by machinery on the waters within the jurisdiction of the state, excepting the waters which are under the jurisdiction of the United States:

(1) When two steamboats are meeting, end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

(2) When two steam vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

(3) When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

(4) When, by any of these rules, one of two vessels is to keep out of the way, the other shall keep her course and speed.

(5) Every vessel under steam, when approaching another steamboat or small boat or vessel of any kind, so as to involve the risk of collision, shall slacken her speed, or if necessary, shall stop and reverse her engine, and every vessel under steam shall, when in a fog, go at a moderate speed.

(6) Any steam vessel overtaking another steam vessel shall keep out of the way of the last mentioned steam vessel.

(7) When two steam vessels are going in the same direction the stern steam vessel wishing to pass the other shall signal the forward steam vessel of her intention to pass on the port side by two distinct whistles, and to pass on her starboard side, by one distinct whistle, which shall be answered by the forward steam vessel with the same number of whistles, and the forward steam vessel shall keep on her course as though no signal had been given.

(8) Steamboats approaching each other shall, at not less than three hundred yards distance between each other, give a signal with one loud distinct whistle.

(9) When two steamboats are approaching each other, and if the course of such steamboats is so far on the starboard side of each as not to be considered by the pilots as meeting end on, or nearly so, or if the steamboats are approaching each other, in such manner that passing to the right as in rule one is deemed unsafe by the pilot of either steamboat, the pilot so first deciding shall give two short and distinct blasts on his steam whistle, which the pilot of the other steamboat shall answer

promptly by two blasts of his steam whistle, and they shall pass to the left (on the starboard) side of each other.

(10) When two steamboats are approaching each other and the pilot of either steamboat fails to understand the course or intention of the other, whether from the signals being given or answered erroneously or from other cause, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle, and if the boats shall have approached within five hundred yards of each other, both shall be immediately slowed to a speed barely sufficient for steerageway until the proper signals are given, answered and understood, or until the boats have passed each other.

(11) When a steamboat is running in a fog or thick weather it shall be the duty of the pilot to cause a long blast of the steam whistle to be sounded at intervals not exceeding one minute.

(12) Signals of distress shall be four distinct blasts of the whistle, and shall be recognized by the master of any steamboat hearing the same, and he shall render such assistance as is in his power.

(13) In construing these provisions, due regard must be had to all the dangers of navigation, and to any special circumstances which may exist, rendering a departure therefrom necessary in order to avoid immediate danger.

(14) Every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam or otherwise propelled by machinery, whether under sail or not, is to be considered a steam vessel.

(15) Nothing in this act shall be construed to extend to any boat or lighter not being masted, or if masted and not decked, employed in the harbor of any town or city.

(16) All steamboats licensed under the provisions of this act shall conform to and obey such other rules and regulations as the commissioner may prescribe, not inconsistent herewith.

(17) The commissioner and the inspectors provided for in this act are authorized to make further rules and regulations applying generally to all steamboats, or especially to one or more of them; and on framing rules for the government of managers and employees of boats, the commissioner shall, as far as practicable, be governed by the general rules and regulations prescribed by the United States board of supervising inspectors of steam vessels.

(18) Every steam vessel or other vessel propelled by machinery, carrying passengers for hire on the waters within the jurisdiction of this state, shall have two copies of this section framed, one to be placed in the pilot-house for the government of the pilot, and the other to be hung in a conspicuous place on the boat, for the inspection of the passengers. [L. '07, p. 429, § 8.]

§ 9851. [8221.] Lights.

The master of every steamboat or vessel propelled by machinery when navigating between sunset and sunrise, shall cause the same to carry the following lights:

(1) At the foremast head, a bright light of such a character as to be visible on a dark night, with a clear atmosphere at a distance of at least two miles; and be so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and to be fixed so as to throw the light ten points on each side of the vessel from right ahead to two points abaft the beam on either side.

(2) On the starboard side a green light of such a character as to be visible on a dark night, with a clear atmosphere at a distance of at least two miles; and be so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(3) On the port side a red light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The green and red lights shall be fitted with inboard screens, projecting at least three feet forward from the lights, so far as to prevent them from being seen across the bow.

(4) The master of every vessel other than a steamboat anchored in the night-time shall cause her peak to be lowered and a good and sufficient light to be thrown from her taffrail in some part of her rigging and at least twenty feet above her deck. In the case of small vessels, the commissioner may make specific rules for lights different from the foregoing. [L. '07, p. 431, § 9.]

See supra, § 2654, penalty for displaying false lights.

§ 9852. [8222.] Fire Apparatus, Ready for Immediate Use.

Every steam vessel permitted by her certificate to carry one hundred passengers or upwards, shall be provided with a good double acting steam fire pump or other equivalent apparatus for throwing water, the same to be at all times during the navigation of such vessel, kept ready for immediate use, having at least one hundred feet of hose of suitable size and of sufficient strength to stand a pressure of at least seventy-five pounds to the square inch. [L. '07, p. 432, § 10.]

§ 9853. [8223.] Vessels to Carry Small Boats.

Every ferry-boat propelled by steam or electricity shall be provided with at least one substantial boat, fifteen feet or more in length, and properly supplied with oars and kept tight and in good condition at all times, and so attached to such ferry-boat that it may in case of need be launched into the water for immediate use. Every steamboat or vessel propelled by machinery and carrying passengers shall be provided, if of the measurement of two hundred and fifty and less than five hundred tons burden, with at least two substantial rowboats, with life-lines attached and properly supplied with oars, and kept tight and in good condition at all times, and so attached as to be capable of being launched into the water for immediate use in case of need; and if of the measure-

ment of five hundred tons or more, with at least one first-class lifeboat and one rowboat twenty-five feet long by seven wide, capable of carrying or supporting fifty persons each, and at least one rowboat of the usual size and construction, all to be properly supplied with oars, and kept tight and in good condition at all times, and so attached as to be capable of being launched into the water for immediate use in case of need. Every such vessel may also be required to carry such other boats as the commissioner, on account of the route, or the number of passengers, shall deem requisite, and the master of such vessel shall exercise and discipline his crew in the launching, use and management of the boat until they become skillful boatmen. [L. '07, p. 432, § 11.]

§ 9854. [8224.] Life-preservers—Buckets and Axes.

Every steam vessel or vessel propelled by machinery used in the transportation of passengers for hire, shall have a life-preserver or life-float for each passenger she is allowed to carry and for each member of her crew. At least one-half thereof shall be life-preservers of the sort prescribed by the supervising inspector appointed under this act, and the other half or part thereof may be life-floats, to be constructed of dry pine plank, four feet long, two inches thick and twelve inches wide, with lines properly attached in such manner as to be convenient for use; and it shall be the duty of the commissioner to satisfactorily ascertain that every life-preserver and such life-boats are as herein required. Such life-preservers and life-floats shall be kept in convenient accessible places in such vessel in readiness for immediate use in case of accident, and the places where the same are to be kept shall be designated in the commissioner's certificate, and also pointed out by printed notices posted in such places as the commissioner directs. Every such vessel shall carry in convenient places, at least ten buckets filled with water, with dip lines attached, and three axes in good condition, but the inspectors may, if they deem it necessary or proper, require a larger, or in case of very small vessels, permit a smaller number of buckets and axes. [L. '07, p. 433, § 12.]

§ 9855. [8225.] Obstruction of Safety Valves, etc., Prohibited—Penalty.

Whoever intentionally loads or obstructs, or causes to be loaded or obstructed, in any way, the safety valve of the boiler, or employs any other means or device whereby the boiler may be subjected to a greater pressure than the amount allowed by the commissioner's certificate, or intentionally deranges or hinders the operation of any machinery or device employed to denote the stage of the water or steam in any boiler, or to give warning of any approaching danger, or intentionally permits the water to fall below the prescribed low water limit of the boiler, shall forfeit to the state of Washington the sum of five hundred dollars for each violation. [L. '07, p. 434, § 13.]

§ 9856. [8226.] Examination for License as Master, Pilot and Engineer.

Every person employed as master, pilot or engineer on board of a steam vessel or a vessel propelled by machinery, carrying passengers for hire or towing for hire, shall be examined by the commissioner as to his

qualifications, and if satisfied therewith he shall grant him a license for a term of one year for such boat, boats or class of boats as said commissioner may specify in such license. In a proper case, the license may permit and specify that the master may act as pilot, and in case of small vessels also as engineer and pilot. The license shall be framed under glass, and posted in some conspicuous place on the vessel on which he may act. Whoever acts as master, pilot or engineer, without having first received such license, or upon a boat or class of boats not specified in his license, shall be liable to a penalty of fifty dollars for each day that he so acts, except as in this act otherwise specified, and such license may be revoked by the commissioner for intemperance, incompetency or willful violation of duty. [L. '07, p. 434, § 14.]

See notes to § 9843.

§ 9857. [8227.] Standard Quality of Oil, to be Used in Lights.

No licensed vessel carrying passengers for hire shall be allowed to use in lamps, lantern or other lights on such vessels, any oil which will not stand a fire test of at least three hundred degrees Fahrenheit. [L. '07, p. 434, § 15.]

§ 9858. [8228.] Name and Home Port on Stern.

Every vessel subject to the provisions of this act, shall have her name and the port to which she belongs painted on her stern on a black background in white, yellow or gilt letters, or on a white background in black, yellow or gilt letters, of not less than three inches in length. If any vessel, which is subject to the provisions of this act, shall be found without having her name, and the name of the port to which she belongs so painted, the owner or owners shall be liable to a penalty of fifty dollars to the state of Washington. The commissioner may, however, in the case of small vessels, permit such name to be placed elsewhere and in letters of less length, the permission, the place of the name and length of letters to be stated in a certificate to be given to the master, who shall exhibit the same whenever requested. [L. '07, p. 435, § 16.]

§ 9859. [8229.] Landing Passengers in Small Boats.

Small boats containing passengers may be landed from or drawn to a steamboat by means of a line hauled in by hand, but in no case shall the line be attached to or hauled in by the machinery of any vessel. No passenger shall be put or suffered to go into any such small boat for the purpose of being landed until such small boats shall be completely afloat and wholly disengaged from the vessel, except held by a painter. A good and sufficient pair of oars suitable for the purpose shall be kept in such small boat. In landing or receiving any passenger in the night-time, there shall be a signal from the small boat at the shore by means of a horn or trumpet, to enable those having charge on board the vessel to determine when the small boat, having landed or received her passengers, is ready to leave the shore. [L. '07, p. 435, § 17.]

§ 9860. [8230.] Same—Engines to be Stopped.

While landing or receiving passengers the engine of the vessel shall not be put in motion except:

- (1) To give sufficient force to carry the small boat to the shore, or,
- (2) To keep the vessel in proper direction and to prevent her from drifting or being driven on shore; but in no case shall it be put in motion while passengers are being transferred from such vessel into a small boat for the purpose of being landed. [L. '07, p. 435, § 18.]

§ 9861. [8231.] Regulation as to Carrying Combustibles.

No loose hay, loose cotton or loose hemp, camphene, nitroglycerine, naphtha, benzine, benzole, coal oil, crude petroleum or other like explosive burning fluids or dangerous articles, shall be carried as freight or used in stoves on any steamer or vessel licensed to carry passengers under this act; except that refined petroleum which will not ignite at a temperature of less than one hundred and twenty degrees Fahrenheit may be carried on the main deck of any vessel, provided the barrels or cases containing such oil are fully provided with a tarpaulin. But nothing in this section provided shall be construed to prevent any vessel of twenty tons burden or under which uses petroleum for fuel from carrying sufficient petroleum with which to replenish the fires and properly equip such vessel for use; said petroleum to be carried in metal cans or tanks, which shall be properly protected by a covering of wood or other substance which would equally protect from accident, and be approved by said commissioner, and to be conveyed from said cans or tanks to said fires through metal pipes. [L. '07, p. 436, § 19.]

§ 9862. [8232.] Unsafe Steam Pressure Prohibited.

No master, engineer or other person having charge of the boiler or apparatus for the generation of steam of any steamboat or vessel shall create, or allow to be created any undue or unsafe quantity of steam in order to increase the speed of such boat or to excel another boat in speed. Any person violating the provisions of this section shall forfeit to the state of Washington the sum of five dollars for every such violation. [L. '07, p. 436, § 20.]

See supra, § 2532, penalty for violation.

See supra, § 2401, manslaughter, through reckless operation.

§ 9863. [8233.] Penalty.

Every master of a steamboat or vessel who shall violate any of the preceding sections of this act shall, for every such violation, forfeit to the state of Washington the sum of two hundred and fifty dollars, unless a different penalty is prescribed. [L. '07, p. 436, § 21.]

§ 9864. [8234.] Liability of Owner of Vessel for Misconduct of Master.

The owner of every steamboat or vessel shall be responsible for the good conduct of the master employed by him, and if any penalty incurred by such master is not paid by him and cannot be collected from him by due course of law, it may be recovered of the owner or owners, jointly

or severally, of the steamboat or vessel in whose employ he was at the time of the incurring of such penalty, in the same manner as if such owner or owners were sureties of such master. [L. '07, p. 436, § 22.]

§ 9865. [8235.] Copy of Act shall be Posted.

The master of every vessel shall keep a copy of the preceding sections of this act posted in a conspicuous place on such vessel for the inspection of all persons on board thereof. Every master violating the provisions of this section shall forfeit to the state of Washington, twenty-five dollars, and the additional sum of twenty-five dollars for each month which such violation continues. [L. '07, p. 437, § 23.]

§ 9866. [8236.] Commissioner's Report to Governor.

The commissioner shall on or before the 1st day of January in each year, make a verified report to the governor containing a detailed statement of the names and number of vessels examined and licensed, the names and number of vessels to which licenses were refused and stating the reasons for the refusal, the names and number of persons examined and licensed, the names and number to whom licenses were refused and stating the reasons therefor, and may include in such report any other information he may deem desirable. [L. '07, p. 437, § 24.]

See notes to § 9843.

§ 9867. [8237.] Penalty for Noncompliance With Act—Renewal of Certificates, etc.—Requirements of Launches Navigating the Straits.

All steam vessels, naphtha, gasoline and electric launches, or any craft propelled by machinery, carrying passengers for hire, or towing for hire must comply with all the terms and provisions of this act, and with all orders, regulations and requirements of the commissioner except that any such vessel not propelled by steam, or when not under steam, is exempt from the provisions in regard to the blowing of whistles. If any such vessel is navigated without complying therewith, except as herein stated, or without the requisite certificates of the commissioner, the owners and masters shall forfeit to the state of Washington the penalties prescribed in this act, and the vessel so navigated shall also be liable therefor, and may be attached and proceeded against in any court having jurisdiction. But if any such vessel is deprived of the services of any licensed officer, without the consent, fault or collusion of the master, owner or any person interested in the vessel, the deficiency may be temporarily supplied, until a licensed officer can be obtained. If the owner or master of any vessel shall at least twenty days before the expiration of his certificate notify the commissioner of such expiration and request a new inspection and certificate, the certificate then expiring shall continue in force until an inspection is made and such owners and masters are not liable for any of the penalties provided in this act on account of navigating said vessel, without such new certificate. No launch under ten tons carrying passengers shall navigate the waters of the straits of Juan de Fuca, unless provided with a boat of sufficient size to accommodate said passengers and be under the management of a

person holding a United States license for steam vessels. [L. '07, p. 437, § 25.]

See *supra*, § 2635, penalty for false register.

§ 9868. [8238.] Fees.

For each inspection provided for in sections 9844 and 9845 the owner or master of each vessel shall pay the commissioner of labor an inspection fee, which shall not be less than five dollars, nor more than twenty dollars, to be fixed by the commissioner of labor with reference to the size of the vessel inspected. For each license issued under section 9860 of this act the person so licensed shall pay to the commissioner of labor the sum of five dollars. All of the fees received from this source shall be accounted for by the commissioner of labor to the state treasurer, and credited to the general fund. [L. '07, p. 438, § 26.]

See notes to § 9843.

§ 9869. [8239.] Compensation of Inspectors.

The inspectors provided for in this act shall receive seven dollars per diem for the time actually engaged in making the inspections and examinations provided for herein, and shall be paid necessary traveling expenses when making such inspections and conducting such examinations at other than the domicile of said inspectors. [L. '07, p. 438, § 27.]

§ 9870. [8240.] Authority of Inspectors.

Any inspector duly employed by the commissioner of labor for the execution of any of the provisions of this act, shall be deemed to be a deputy of said commissioner for the purposes hereof, and may perform any act and exercise any authority herein prescribed for the commissioner of labor. [L. '07, p. 438, § 28.]

See notes to § 9843.

CHAPTER XII.

PILOTAGE ON PUGET SOUND.

§ 9871. [8241.] United States License Required.

No person shall pilot on Puget Sound waters unless he shall hold a pilot's license from the United States government for Puget Sound waters and he shall not pilot a vessel of any greater tonnage than his license provides and must have had at least one year's experience as pilot of over-sea or coasting vessels of at least fifteen hundred gross tons. [L. '07, p. 291, § 1.]

For former laws on this subject, see L. '88, pp. 175—179, §§ 1—29; 1 H. C., §§ 2272—2279; Bal. Code, §§ 3216—3243.

The legislature has power to regulate pilotage of the public waters within the boundaries of the state so far as relates to vessels engaged in strictly foreign commerce, since congress has not attempted to regulate the same: *State v. Ames*, 47 Wash. 328, 92 Pac. 328.

The pilotage law, Ballinger's Code,

§§ 3216—3243 (repealed by this chapter), applied to vessels propelled by steam as well as sailing vessels: *Id.*

Liability and Remedies for Obstructions: See *Remington's Digest*, Nav. Wat., §§ 10—20, and cases cited.

License of pilots. 39 L. R. A. 183.

§ 9872. [8242.] Lien of Pilot for Services.

Each vessel, its tackle, apparel and furniture, and the master and the owner thereof, are jointly and severally liable for the compensation of any pilot employed for such vessel; and such pilot shall have a lien upon such vessel, her tackle, apparel and furniture, for such compensation. [L. '07, p. 291, § 2.]

Maritime lien for services of pilot. 70 L. B. A. 384.

§ 9873. [8243.] Penalty for Employing Other Than Licensed Pilot.

Nothing in this chapter shall be construed to compel any vessel to employ a pilot; but no pilot shall be employed by any such vessel for the waters aforesaid except one licensed under the provisions of this chapter. The master of any vessel subject to the provisions of this chapter who knowingly employs any person to act as pilot in such waters who is not so licensed shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars, and not more than five hundred dollars, and shall be imprisoned in the county jail of the county wherein he is so convicted until said fine, and the costs of prosecution, are paid. [L. '07, p. 291, § 3.]

Power to impose penalty for failure
to take pilot, for benefit of private

individual or corporation. 13 A. L.
B. 835.

§ 9874. [8244.] Penalty for Acting as Pilot Without License.

Any person who has not been licensed as provided in this chapter, or whose license is then suspended or has been revoked, who shall offer or undertake to pilot, or shall pilot, any vessel subject to the provisions of this act, upon any of the waters of Puget Sound, its bays, harbors or inlets, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished by a fine of not less than two hundred dollars, and not more than five hundred dollars, and shall be imprisoned in the county jail of the county wherein he is so convicted until said fine, and the costs of his prosecution, are paid. [L. '07, p. 292, § 4.]

See supra, § 2527, intoxication while on duty.

See supra, § 2545, acting without a license.

§ 9875. [8245.] Exemptions.

Vessels regularly in the coasting trade between ports of the United States or between such port and ports in Alaska, whether such vessels touch at a British Columbia port or not, and vessels regularly in the carrying trade between United States ports and British Columbia ports and pilots of such vessels while engaged thereon, are exempt from the provisions of this chapter. [L. '07, p. 292, § 5.]

CHAPTER XIII.

PILOTAGE ON COLUMBIA RIVER.

§ 9876. [8246.] Appointment of Pilot Commissioners and Pilots on Columbia River.

It shall be the duty of the governor to appoint three suitable persons, who shall constitute a board of pilot commissioners, for the purpose of examining candidates for the pilotage of the Columbia River and bar, and the said board of commissioners shall, on application; appoint one or more suitable persons, if the [they] deem it necessary, to be pilots on the Columbia River and bar, giving each of such pilots a branch or warrant for the execution of his office, with an authority to appoint deputies in the cases to be specified in such branch or warrant: Provided, each pilot shall report his said deputies for the approbation of said board of commissioners: Provided, that whenever there shall be a vacancy in said board of commissioners, such vacancy shall be filled by appointment, made by the governor. Said commissioners, before entering upon the duties of their office, shall qualify, by oath or affirmation, for the faithful discharge of their duties, and shall be entitled to hold said office of commissioner for the term of two years from the date of their appointment, and after said board of commissioners shall have organized, they shall forthwith notify the governor thereof, and they shall make a report of their proceedings to the governor at least once in every year thereafter. [L. '88, p. 171, § 1; 1 H. C., § 2300.]

Compare L. '54, pp. 389—391; L. '61, p. 58; L. '63, pp. 482—485; L. '66, pp. 121—125; L. '71, pp. 86—88; L. '77, p. 297.

State regulation of pilots and their charges. 27 Am. St. Rep. 557.

§ 9877. [8247.] Duty and Authority of Branch Pilot—Pilotage not Required, When.

Every such branch pilot is authorized and directed, by himself or his deputies, to take charge of any vessel requiring his services, bound into or out of the Columbia River, but shall first show the master of such vessel his warrant, but no vessel licensed or engaged exclusively in the coasting trade between any port in the state of Washington and any port on the Pacific coast shall be compelled to pay pilotage, unless the services of a pilot are required; and in all cases where the services of a pilot are required by the master of any vessel, said vessel shall be liable to pay the pilot his fees as specified in this chapter. [L. '88, p. 172, § 2; 1 H. C., § 2301.]

§ 9878. [8248.] Pilot Fees—Rates Fixed—Half and Quarter Fees.

The fee for piloting a ship or vessel from the open sea beyond the bar to Astoria or Knappton shall be eight dollars per foot draft for the first twelve feet, and for piloting a ship or vessel from Astoria or Knapp-ton to the open sea beyond the bar, eight dollars per foot draft for the first twelve feet, and ten dollars per foot draft for the excess above twelve feet. If a pilot shall board a ship or vessel bound in, while she is either on or within the bar and not above Sand Island, he shall be entitled to only half fees from thence to Astoria; and if at the time of

boarding she shall be above Sand Island, he shall be entitled to quarter fees only; but no ship or vessel bound in shall be required to pay pilotage, which refuses to take a pilot after arriving on the bar. The fees of pilots on the river above Astoria shall be fixed from time to time by the pilot commissioner. [L. '88, p. 172, § 3; 1 H. C., § 2302.]

§ 9879. [8249.] Bond of Pilots.

Every bar pilot to whom a branch or warrant shall be granted by said board shall, before entering upon the duties of his or their office, give bonds with sufficient surety to the said board of pilot commissioners in the sum of five thousand dollars, and every river pilot to whom a branch or warrant shall be granted by said board shall, before entering upon the duties of his or their office, give bonds with sufficient security to the said board of pilot commissioners in the sum of three thousand dollars, for the faithful performance of his or their duties while in office. [L. '88, p. 172, § 4; 1 H. C., § 2303.]

§ 9880. [8250.] Commissioners to Visit Columbia River Bar.

It shall be the duty of the board of pilot commissioners to make semi-annual visits to the bar of the Columbia River, examine into the conduct of the pilots, and the condition of the boats employed on said bar as is hereafter specified. [L. '88, p. 173, § 5; 1 H. C., § 2304.]

§ 9881. [8251.] Duties of Bar Pilots.

The bar pilots appointed under the provisions of this chapter must keep a good, seaworthy boat or boats of not less than sixty-five tons burden, and shall at all times cruise outside the bar of the Columbia River, unless prevented by tempestuous weather; and if any such pilot or pilots fail to comply with any of the provisions of this section, it shall be good cause for suspension or removal: Provided, that this section shall not affect any claim of salvage arising out of the services involving extraordinary damages or risk. [L. '88, p. 173, § 6; 1 H. C. § 2305.]

§ 9882. [8252.] Qualification of Bar Pilot.

No person shall be licensed as a pilot by said board unless he is an American citizen of the age of twenty-one years, of temperate habits, and good moral character; nor unless he possesses the requisite skill and experience as a navigator and pilot, together with practical knowledge of the currents, tides, soundings, and bearings, and the distances of the several shoals, rocks, bars, points of land, lights, and fog signals, of or pertaining to the navigation of the pilot ground, nor unless it satisfactorily appears that the applicant is provided with or is attached to a pilot boat of such character and conditions as the board has prescribed for that service. No bar pilot license shall be issued to the owner or owners of any steam tugboat, or any person or persons in the employ of any such tugboats or the owners thereof, or any other person, firm, or corporation; and it shall be unlawful for any bar pilot to be employed or interested in any such tugboat in the capacity of a bar pilot, and any

bar pilot violating this provision shall forfeit his license. [L. '88, p. 173, § 7; 1 H. C., § 2306.]

See *supra*, § 2527, intoxication while on duty.

See *supra*, § 2545, acting without a license.

§ 9883. [8253.] Supplies of Pilot Boat—Duties of Pilot.

The said pilots' boat or boats shall at all times carry a sufficient supply of provisions and water as may be necessary for the relief of vessels in distress, and it shall be the duty of the pilots at all times to offer such aid to vessels in stress of weather or in case of disaster. [L. '88, p. 173, § 8; 1 H. C., § 2307.]

§ 9884. [8254.] Liability of Pilot for Negligence and Unskillfulness.

If a vessel while under the charge of a branch or warrant pilot shall be lost or run aground, or sustain any damage through the negligence or unskillfulness of such pilot, such pilot shall be liable to pay all damages sustained by any person interested in such vessel or her cargo and may, moreover, be removed from his office. [L. '88, p. 173, § 9; 1 H. C., § 2308.]

§ 9885. [8255.] Exemptions from Pilotage.

Any master of a vessel who may choose to pilot his own vessel from outside of the Columbia River bar into said river shall be permitted to do so, but he shall, notwithstanding, when bound into the river pay to such pilot as shall first offer his services, off the bar one-half pilotage, according to the fees specified in said warrant; and if bound out, one-half pilotage: Provided, that in the following cases a vessel is exempt from compulsory pilotage, and is not required to pay a pilot unless one is actually employed:—

1. A vessel engaged in the whaling or fishing trade;
2. A vessel licensed and engaged in the coaling [coasting] trade between any port in Washington, and any port on the Pacific Coast. [L. '88, p. 173, § 10; 1 H. C., § 2309.]

§ 9886. [8256.] Complaints Against Pilots.

The said board of commissioners are authorized to hear and determine all complaints exhibited against the pilots appointed by them as aforesaid, and to suspend or remove them and appoint others in their place. [L. '88, p. 174, § 11; 1 H. C., § 2310.]

§ 9887. [8257.] Liability for Pilot Fees.

Should any shipmaster omit or refuse to pay the pilotage fees in any instance, when by this chapter he has become liable, then his consignees shall become liable for the same. [L. '88, p. 174, § 12; 1 H. C., § 2311.]

§ 9888. [8258.] Detention of Pilot on Board Vessel Outward Bound—Penalty.

If a pilot, acting under the provisions of this chapter, shall have boarded any vessel outward bound, and shall be detained on board said

vessel and carried to sea, or to any foreign port, the officers of said vessel so detaining said pilot shall be liable to pay the pilot so detained a compensation equal to the pay of the highest officer on board of said vessel for all the time he shall be necessarily detained from his proper port. [L. '88, p. 174, § 13; 1 H. C., § 2312.]

§ 9889. [8259.] Fees and Expenses of Board, etc.

The board of commissioners created by this chapter shall be entitled to receive, for the execution of a branch or warrant, the sum of twenty dollars, to be paid by the person applying for the branch or warrant; also, five dollars per day for adjusting difficulties that may arise between such pilots and shipmasters or owners, the said fees to be paid by the parties in fault; and for every [day] the said board of commissioners are in actual session, except when engaged in adjusting or settling disputes between pilots and shipmasters or owners, they shall be entitled to receive the sum of five dollars per day, and mileage at the rate of two dollars for every twenty miles traveled in coming to and going from the place where the sessions of said board are held: Provided, however, that they shall not receive pay for more than three days' time at any one session; and all money received for the execution of any branch warrant or warrants shall constitute a fund to defray the incidental expenses of the said board of pilot commissioners, and the secretary of said board shall, at the end of each regular session, make a written statement of the number of days and the amount of mileage for which each commissioner is entitled to receive pay, which statement shall be signed by the secretary and chairman of the said board of commissioners, and the state auditor, if he shall find said statement correct as herein provided, shall draw a warrant on the state treasurer for the amount which each commissioner is entitled to receive pay, and the state treasurer is hereby authorized to pay the same out of any money not otherwise appropriated. [L. '88, p. 174, § 14; 1 H. C., § 2313.]

§ 9890. [8260.] Forfeitures, etc.—Jurisdiction Over.

All forfeitures, liabilities, and penalties incurred under this chapter shall be tried and determined in any court of record having cognizance of the same. [L. '88, p. 175, § 15; 1 H. C., § 2314.]

CHAPTER XIV.

CRAFT ADRIFT.

§ 9891. [8287.] Water Craft Found Adrift—Owner to be Notified.

Any person taking up any scow, boat, skiff, canoe, or other water craft found adrift and out of the custody of the owner, in any stream or body of water within or bordering upon this state, shall forthwith notify the owner thereof, if to him known, or if upon reasonable inquiry he can ascertain the name and residence of the owner, and request such owner to pay all reasonable charges, and take such water craft away. [L. '54, p. 386, § 1; Cd. '81, § 3242; 1 H. C., § 2339.]

§ 9892. [8288.] Notice—How Served, and What to Contain.

Such notice shall be given personally or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the postoffice where such owner usually receives his letters. Such notice shall inform the party where the scow, boat, skiff, canoe, or other water craft was taken up, and where it may be found, and what amount the taker-up or finder demands for his charges. [L. '54, p. 386, § 2; Cd. '81, § 3243; 1 H. C., § 2340.]

§ 9893. [8289.] Notice to be Posted, When—What to Contain.

In all cases where notice is not given personally, it shall be the duty of the taker-up to post up at the postoffice nearest the place where such scow, boat, skiff, canoe, or other water craft may be taken up, a written notice of the taking up of such water craft, which shall contain a description of the same, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up. If the taker-up is traveling upon such stream or body of water, such notice shall be posted up at the first postoffice he shall pass after the taking up; and in all cases he shall, at the time when and place where he posts up such notice, also mail a copy of such notice, directed to the postmaster of each postoffice on said stream or body of water, and within fifty miles of the place where such water craft is taken up. [L. '54, p. 386, § 3; Cd. '81, § 3244; 1 H. C., § 2341.]

§ 9894. [8290.] Compensation—Failure to Give Notice—Penalty.

Every person, taking up any scow, boat, skiff, canoe, or other water craft, so found adrift, and giving the notice herein required, shall be entitled to receive from the owner claiming the property a reasonable compensation for his time, services, expenses, and risk in taking up said property, and take notice of the same, to be settled by agreement between the parties. In case he has not, within ten days after the taking up, substantially complied with the provisions of this chapter in giving the notice, he shall be entitled to no compensation, but he shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of said water craft, from the time of taking it up until the same is delivered to the owner. [L. '54, p. 386, § 4; Cd. '81, § 3245; 1 H. C., § 2342.]

§ 9895. [8291.] Disputed Claim—Trial of.

In case the parties cannot agree on the amount to be paid the taker-up, or the ownership, and the sum claimed is less than one hundred dollars, the owner may file a complaint, setting out the facts, and the justice, on hearing, shall decide the same with a jury, or not, and in the same manner as is provided in ordinary civil actions before a justice of the peace. If the amount claimed by the taker-up is more than one hundred dollars, the owner shall file his complaint in the superior court of the county where the property is, and trial shall be had as in other civil actions; but if the taker-up claims more than one hundred dollars, and a less amount is awarded him, he shall be liable for all the costs in the superior court; and in all cases where the taker-up shall recover a

less amount than has been tendered him by the owner or claimant, previous to filing his complaint, he shall pay the costs before the justice or in the superior court: Provided, that in all cases the owner, after filing his complaint before a justice of the peace, shall be entitled to the possession of such water craft, upon giving bond, with security to the satisfaction of the justice, in double the amount claimed by the taker-up. When the complaint is filed in the superior court, the clerk thereof shall approve the security of the bond. The bond shall be conditioned to pay such costs as shall be awarded to the finder or taker-up of such scow, boat, skiff, canoe, or other water craft. [L. '54, p. 386, § 5; Cd. '81, § 3246; 1 H. C., § 2343.]

§ 9896. [8292.] Unclaimed Boat—Liability for Using.

In case the taker-up shall use the scow, boat, skiff, canoe, or other water craft more than is necessary to put it into a place of safety, he shall be liable to the owner for such use, and for all damage; and in case it shall suffer injury from his neglect to take suitable care of it, he shall be liable to the owner for all damage. In case such water craft is of less value than one hundred dollars, and is not claimed within three months, the taker-up may apply to a justice of the peace of the precinct where the property is, who, upon being satisfied that due notice has been given, and that the owner cannot, with reasonable diligence, be found, shall order the scow, boat, skiff, canoe, or other water craft to be sold, and after paying the taker-up such sum as he shall be entitled to, and the costs, the balance shall be paid the county treasurer, as is provided in the case of the sale of estrays. In case the scow, boat, skiff, canoe, or other water craft exceeds one hundred dollars, and is not claimed within six months, application shall be made to the superior court of the county, and the same proceedings shall be thereupon had. All sales made under this section shall be conducted as sales of personal property on execution. [L. '54, p. 387, §§ 6, 7; Cd. '81, § 3247; 1 H. C., § 2344.]

CHAPTER XV.

OBSTRUCTIONS TO NAVIGATION.

§ 9897. [8293.] Obstructing Navigation.

Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river or stream within or bordering upon this state, navigable and generally used for the navigation of vessels, boats, or other water crafts, or for the floating down of logs, cordwood, fencing posts, or rails, shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars: Provided, that the placing of any mill dam or boom across a stream used for floating saw-logs, cordwood, fencing posts, or rails shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats, saw-logs, cordwood, fencing posts, or rails without unreasonable delay. [Cf. L. '54, p. 94, § 104; Cd. '81, § 919; L. '88, p. 190, § 1; 2 H. P. C., § 226.]

See *supra*, § 2656, obstructing navigable waters, penalty.

See *supra*, § 4057-1, flood prevention.

See *supra*, § 8411, boom company not to obstruct.

See *supra*, § 9327, drawbridge not to obstruct.

See *infra*, §§ 9913, 9914, nuisance to obstruct.

Obstruction of navigation. 59 L. R.
A. 33.

Waiver or estoppel of government as
to obstructions to navigation by
laches. 2 A. L. R. 1694.

Criminal liability of corporation for
obstruction of public waterway.
Ann. Cas. 1916C, 463.

§ 9898. [8294.] Discharging Ballast in Navigable Waters.

Every master or mate, or other officer or other person, belonging to or in charge of any vessel, who shall discharge or cause to be discharged the ballast of such vessels into the navigable portions or channels of any of the inlets, bays, harbors or rivers within or bordering on this state, where the water is less than twenty fathoms deep, shall, on conviction thereof, be fined in any sum not less than seventy-five dollars, nor more than five hundred dollars: Provided, that nothing in this section shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above ordinary high tide in all waters where the tide ebbs and flows, and that no ballast shall be discharged on any of the flats included within the boundary of any city or town site or extension thereof: And provided, further, that in harbors within or in front of any incorporated city, where the waters are less than twenty fathoms deep, a section of said harbor may be set aside and designated by the city council of said city as a ballast ground, where ballast may be discharged under control of a harbor master to be appointed by the council. [Cf. L. '54, p. 94, § 103; L. '77, p. 285, § 1; Cd. '81, § 918; L. '91, p. 128, § 30; 2 H. P. C., § 227; L. '97, p. 18, § 1.]

No Exeat See §§ 778—784.

Negotiable Instruments. See "Bills and Notes," § 3392

Newspapers. See "Frauds," § 5842.

Legal publications, see §§ 253-1—253-7.

New Trial. See §§ 398—403.

In criminal actions, see §§ 2181—2186.

Nominations. See "Elections," § 5167.

Nonsuit. See § 408.

Normal Schools. See "Education," § 4604.

TITLE LXII.

NOTARIES PUBLIC.

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CHAPTER I.—NOTARIES PUBLIC.

9899. Appointment and qualifications.	9905. Record of notices of protest.
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CHAPTER II.—COMMISSIONERS OF DEEDS.

9910. Appointment.	9911. Oath, seal, fee, etc.
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CHAPTER I.

NOTARIES PUBLIC.

§ 9899. [8295.] Appointment and Qualifications.

The governor may appoint and commission, as notaries public, as many persons having the qualifications of electors as he shall deem necessary: Provided, that no person shall be appointed a notary public except upon the petition of at least twenty freeholders of the county in which such person resides: Provided further, that women over the age of twenty-one years resident within this state and of good moral character may be appointed. [L. '90, p. 473, § 1; 1 H. C., § 329; L. '07, p. 264, § 1.]

For former laws, compare L. '54, p. 444; L. '62, p. 52; L. '63, p. 501; L. '69, p. 375; L. '73, p. 467; L. '75, pp. 118—120; L. '77, p. 253; Cd. '81, §§ 2614—2625; L. '83, p. 43.

Cited in 21 Wash. 365.

Appointment, Qualification and Tenure
—**Collateral Attack:** See Remington's Digest, Notaries, § 1; Bullene v. Garrison, 1 W. T. 587.

Disqualification to Act: See Reming-

ton's Digest, Notaries, § 2; Spokane & Idaho Lum. Co. v. Loy, 21 Wash. 501, 58 Pac. 672, 60 Pac. 1119; McLean v. Roller, 33 Wash. 166, 73 Pac. 1123; Keene Guaranty Sav. Bank v. Lawrence, 32 Wash. 572, 73 Pac. 680.

§ 9900. [8296.] Term of Office.

Every notary public shall be appointed for the state, and shall hold his office for four years, unless sooner removed by the governor. [L. '90, p. 473, § 2; 1 H. C., § 330.]

§ 9901. [8297.] Bond, Fee, Seal and Oath of Office.

Before a commission shall issue to the person appointed, he shall,—

1. Execute a bond, payable to the state of Washington, in the sum of one thousand dollars, with sureties to be approved by the county clerk

of the county in which the applicant resides, conditioned for the faithful discharge of the duties of his office;

2. Pay into the state treasury the sum of ten dollars for special state library fund, taking the treasurer's receipt therefor;

3. Procure a seal, on which shall be engraved the words "Notary Public" and "State of Washington," and date of expiration of his commission, with surname in full, and at least the initials of his Christian name;

4. To take and subscribe the oath of office required of state officers;

5. File the said oath of office, bond, and treasurer's receipt in the office of the secretary of state; and before performing any official acts, shall file in the office of the secretary of state a clear impression of his official seal, which seal shall be approved by the governor. [L. '90, p. 473, § 3; 1 H. C., § 331.]

What amounts to notary's seal. 7 A. L. R. 1663.

§ 9902. [8298.] Powers of Notary.

Every duly qualified notary public is authorized in any county in this state,—

1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant;

2. To take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law;

3. To take depositions and affidavits, and administer all oaths required by law to be administered; and every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified. [L. '90, p. 474, § 4; 1 H. C., § 332.]

Cited in 21 Wash. 505; 33 Wash. 168; 69 Wash. 87; 91 Wash. 483, 486.

Under this section, authorizing a notary public to take depositions and affidavits and administer all oaths required by law to be administered, a notary cannot, unless it is required by law, administer an oath with such binding force as is necessary to support a charge of perjury, in case of a false sworn statement: *State v. Dallagiovanna*, 69 Wash. 84, 124 Pac. 209, 40 L. R. A. (N. S.) 249.

Under this section, authorizing a notary public to take affidavits and admin-

ister all oaths required by law to be administered, false swearing or perjury in the second degree may be predicated upon a false affidavit sworn to before a notary public, although the affidavit was not required by law; an affidavit being not only a written oath but a statement of things sworn to: *State v. Howard*, 91 Wash. 481, 158 Pac. 104.

Liability for Negligence: See *Remington's Digest*, Notaries, § 6; *Ehlers v. United States Fidelity & Guaranty Co.*, 87 Wash. 662, 152 Pac. 518.

§ 9903. [8298-1.] Powers of Notaries in Banks and Corporations.

It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation or to protest for nonacceptance or nonpayment of bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation: Provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which

he is a stockholder, director, officer or employee, where such notary is a party to such instrument individually or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument. [L. '13, p. 89, § 1.]

§ 9904. [8299.] Signature—Seal Need not be Affixed, When.

It shall not be necessary for a notary public, in certifying an oath to be used in any of the courts in this state, to append an impression of his official seal, but in all other cases when the notary public shall sign any instrument officially, he shall, in addition to his name and the words "notary public," add his place of residence and affix his official seal. [L. '90, p. 474, § 5; 1 H. C. § 333.]

Cited in 1 Wash. 474; 25 Wash. 475; 29 Wash. 633.

Seal: See Remington's Digest, Notaries, § 3; Gates v. Brown, 1 Wash. 470, 25 Pac. 914.

Certificates and Records in General—Sufficiency and Validity: See Remington's Digest, Notaries, §§ 4, 5; Griffin v. Catlin, 25 Wash. 474, 65 Pac. 755, 87 Am. St. Rep. 782; Duggan v. Washougal Land etc.

Co., 10 Wash. 84, 38 Pac. 856; Western Loan & Sav. Co. v. Waisman, 32 Wash. 644, 73 Pac. 703.

Effect of failure of notary to attach seal to document as required by law. **Ann. Cas.** 1914C, 758.

Right of notary to attach or correct certificate of acknowledgment after date of acknowledgment. 22 **L. R. A. (N. S.)** 216.

§ 9905. [8300.] Record of Notices of Protest.

Every notary public is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served, and of the notice itself; said record, or a copy thereof, duly certified under the hand and seal of the notary public, or county clerk having the custody of the original record, shall be competent evidence to prove the facts therein stated, but the same may be contradicted by other competent evidence. [L. '90, p. 474, § 6; 1 H. C., § 334.]

§ 9906. [8301.] Records to be Deposited in County Clerk's Office, When.

On the death, resignation, or removal from office, and at the expiration of the term of office, of any notary public, provided his commission is not renewed, his records and all his official papers shall, within three months therefrom, be deposited in the office of the county clerk of the county from which such notary shall have been appointed, and if any notary public, on his resignation or removal from office, shall for the space of three months, neglect to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, to be recovered in a civil action by any person injured by such neglect, and it shall also be the duty of the executor or administrator of the estate of any notary public, deceased, to deposit the records and official papers of such notary with the said clerk, and within three months after his appointment, under like penalty. [L. '90, p. 475, § 7; 1 H. C., § 335.]

§ 9907. [8302.] Fees of Notary.

Every notary public is entitled to demand and receive the fees herein enumerated:—

1. Protest of a bill of exchange or promissory note.....\$1.00
2. Attesting any instrument of writing, with or without seal..... .50
3. Taking acknowledgment, two persons, with seal50
4. Taking acknowledgment, each person over two..... .25
5. Certifying affidavit, with or without seal..... .50
6. Registering protest of bill of exchange or promissory note for nonacceptance or nonpayment..... .50
7. Being present at demand, tender or deposit, and noting the same, besides mileage at the rate of ten cents per mile..... .50
8. Noting a bill of exchange or promissory note, for nonacceptance or nonpayment..... .50
9. For copying any instrument or record, besides certificate and seal per folio..... .15
10. Each oath or affirmation, without seal..... .25
11. For any instrument of writing, or depositions or affidavits written, exclusive of the certificate thereto, drawn by a notary public, for each hundred words..... .25

[Cf. L. '90, p. 475, § 8; 1 H. C., § 336; L. '93, p. 421, § 1; L. '03, p. 290, § 1; L. '07, p. 94, § 1.]

§ 9908. [8303.] Secretary of State to Certify—Filing of Certificate.

After the delivery of a commission to a notary public, appointed and qualified as heretofore provided, the secretary of state shall make a certificate of such appointment, with the date of said commission, and file the same in the office of the county clerk of the county where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. [L. '90, p. 475, § 9; 1 H. C., § 337.]

§ 9909. [8304.] Certificate as to Official Character—Fee.

The county clerk of the county in which such notary resides, or the secretary of state, may grant certificates of official character of notaries public. The certificate of the clerk shall be under his hand and official seal, and that of the secretary of state under the seal of the state. The fee for such certificates shall be one dollar, and shall be paid by county clerks into the treasury of their respective counties, and by the secretary of state into the state treasury. [L. '90, p. 476, § 10; 1 H. C., § 338.]

CHAPTER II.

COMMISSIONERS OF DEEDS.

§ 9910. [8305.] Appointment.

The governor may appoint in each of the United States, and the territories thereof, one or more commissioners, under the seal of this state, to continue in office for the term of four years, who shall have power

to administer oaths, and to take depositions and affidavits, to be used in this state, and also to take the acknowledgment of any deed or other instrument to be used or recorded in the state. [Cf. Cd. '81, § 2626; L. '90, p. 90, § 1; L. '90, p. 91, § 1; 1 H. C., § 339.]

For former laws compare L. '54, p. 448; L. '63, p. 500; L. '71, p. 91; L. '73, p. 477.

§ 9911. [8306.] Oath, Seal, Fee, etc.

Before any commissioner appointed as aforesaid shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any clerk of a court of record, or other officer having an official seal authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all duties of his office, a certificate of which shall be filed in the office of the secretary of state, and shall provide and keep an official seal, upon which must be engraved his name and the words "Commissioner of Deeds for the State of Washington," and the name of the state or territory for which he is commissioned, with the date at which his commission expires, and shall pay into the state treasury the sum of five dollars for the special state library fund. [Cd. '81, § 2627; L. '90, p. 90, § 2; 1 H. C., § 340.]

Notes. See "Bills and Notes," § 3392.

Noxious Weeds. See "Agriculture," § 2756.

TITLE LXIII.

NUISANCES.

- | | |
|-------------------------------------------|------------------------------------------------------------|
| 9912. Public nuisance defined. | 9921. Civil action. |
| 9913. Public nuisances enumerated. | 9922. Abatement by whom. |
| 9914. Nuisance, what is. | 9923. How abated. |
| 9915. Private nuisance defined. | 9924. Certain places of resort declared nuisances—Penalty. |
| 9916. Authorized act not a nuisance. | 9925. Punishment and abatement. |
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| 9918. Abatement does not preclude action. | 9927. Stay of warrant—Bond. |
| 9919. Lapse of time does not legalize. | 9928. Costs of abating nuisance. |
| 9920. Remedies against public nuisance. | |

§ 9912. [8307.] Public Nuisance Defined.

A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal. [L. '75, p. 79, § 2; Cd. '81, § 1236; 1 H. C., § 2883.]

See supra, § 943 et seq., what nuisances are actionable.

Cited in 8 Wash. 582, 583; 35 Wash. 595.

§ 9913. [8308.] Public Nuisances Enumerated.

It is a public nuisance,—

1. To cause or suffer the carcass of any animal or any offal, filth or noisome substance to be collected, deposited or to remain in any place to the prejudice of others;

2. To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake or well, to the injury or prejudice of others;

3. To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water;

4. To obstruct or encroach upon public highways, private ways, streets, alleys, commons, landing places, and ways to burying places;

5. To carry on the business of manufacturing gun-powder, nitroglycerine or other highly explosive substance, or mixing or grinding the materials therefor, in any building within fifty rods of any valuable building, erected at the time such business may be commenced;

6. To establish powder magazines near incorporated cities or towns, at a point different from that appointed by the corporate authorities of such city or town; or within fifty rods of any occupied dwelling-house;

7. To erect, continue, or use any building, or other place, for the exercise of any trade, employment or manufacture, which, by occasioning obnoxious exhalations, offensive smells or otherwise is offensive or dangerous to the health of individuals or of the public;

8. To suffer or maintain on one's own premises, or upon the premises of another, or to permit to be maintained on one's own premises, any place

where wines, spirituous, fermented, malt or other intoxicating liquors are kept for sale or disposal to the public in contravention of law.

And every person who has the care, government, management or control of any building, structure, powder magazine, or any other place mentioned in this section shall, for the purposes of this section, be taken and deemed to be the owner or agent of the owner or owners of such building, structure, powder magazine or other place, and, as such, may be proceeded against for the erecting, contriving, causing, continuing or maintaining such nuisance. [Cf. Cd. '81, § 1246; 1 H. C., § 2893; L. '95, p. 19, § 1.]

"Section" substituted for act. See, also, §§ 2500—2505.

See supra, §§ 2500, 2501, public nuisances defined.

Cited in 16 Wash. 326; 35 Wash. 595; 45 Wash. 666; 58 Wash. 569.

Matters Constituting Public Nuisances: See Remington's Digest, Nuis., §§ 11—14.

§ 11. **In General:** Northern Pac. R. Co. v. Whalen, 3 W. T. 452, 17 Pac. 890; State v. Bruce, 23 Wash. 777, 63 Pac. 519.

§ 12. **Public Annoyance, Injury or Danger:** Graetz v. McKenzie, 9 Wash. 696, 35 Pac. 377; Tilden v. Gordon & Co., 34 Wash. 92, 74 Pac. 1016; Dempsie v. Darling, 39 Wash. 125, 81 Pac. 152; Ingersoll v. Rousseau, 35 Wash. 92, 76 Pac. 513, 1 Ann. Cas. 35; Wilcox v. Henry, 35 Wash. 591, 7 Pac. 1055; Richards v. Seattle, 62 Wash. 684, 114 Pac. 896.

A tuberculosis sanitarium maintained in a residential section of the city will be enjoined as a nuisance, where the fear and dread of the disease is such that it depreciates the value of adjacent property to an extent of one-third or one-half, and interferes with the comfortable enjoyment thereof, disturbing the minds, nerves and

sleep of the occupants; especially in view of this section, defining a nuisance as any act that either annoys or endangers the comfort or repose of others: Everett v. Paschall, 61 Wash. 47, 111 Pac. 879, Ann. Cas. 1912B, 1128, 31 L. R. A. (N. S.) 827.

§ 13. **Obstructing Highway:** Johnson v. Maxwell, 2 Wash. 482, 27 Pac. 1071; Smith v. Mitchell, 21 Wash. 536, 58 Pac. 667, 75 Am. St. Rep. 858; Lund v. St. Paul M. & M. R. Co., 31 Wash. 286, 71 Pac. 1032, 96 Am. St. Rep. 906, 61 L. R. A. 506.

• § 14. **Persons Continuing Nuisance:** Coffey v. Territory, 1 Wash. 325, 25 Pac. 632, 11 L. R. A. 296.

Validity of municipal regulations as to garbage. 15 A. L. R. 289.

Trolley poles in street as nuisance. 2 A. L. R. 496.

Storing of explosives in highway as a nuisance. 11 A. L. R. 719.

§ 9914. [8309.] Nuisance, What is.

Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. [L. '75, p. 79, § 1; Cd. '81, § 1235.]

See supra, § 2960, penalty for maintaining.

Cited in 61 Wash. 50; 62 Wash. 368; 108 Wash. 440.

§ 9915. [8310.] Private Nuisance Defined.

Every nuisance not included in the definition of section 9912 is private. [L. '75, p. 79, § 3; Cd. '81, § 1237; 1 H. C., § 2884.]

See supra, § 943 et seq., what nuisances are actionable.

Cited in 35 Wash. 595.

Private Nuisances in General: See Remington's Digest, Nuis., §§ 1—10, and cases cited. See, also:

Undertaking Establishment—Injunction: Goodrich v. Starrett, 108 Wash. 437, 184 Pac. 220.

— Children's Detention Home: *Hughes v. McVay*, 113 Wash. 333, 194 Pac. 565.

Operation of railroad as a nuisance to property. 6 A. L. R. 723.

Dust as nuisance. 3 A. L. R. 312; 11 A. L. R. 1401.

Steam whistle as nuisance. 4 A. L. R. 1343.

Picketing as a nuisance. 6 A. L. R. 934.

Mausoleum as a nuisance. 1 A. L. R. 546.

Pesthouse or contagious disease hospital as nuisance. 4 A. L. R. 995.

Penal institution as nuisance. 14 A. L. R. 687.

§ 9916. [8311.] Authorized Act not a Nuisance.

Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. [L. '75, p. 79, § 4; Cd. '81, § 1238; 1 H. C., § 2885.]

Cited in 93 Wash. 178; 113 Wash. 339.

In view of this section, a children's detention home required by statute to be built will not be enjoined as a nuisance

detrimental to residential property: *Hughes v. McVay*, 113 Wash. 333, 194 Pac. 565.

§ 9917. [8312.] Successive Owners.

Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property, caused by a former owner, is liable therefor in the same manner as the one who first created it. [L. '75, p. 79, § 5; Cd. '81, § 1239; 1 H. C., § 2886.]

Liability of purchaser of property for continuing nuisance. 13 Ann. Cas. 108; 14 A. L. R. 1094.

Necessity of notice to make owner of

premises liable for continuing nuisance created by predecessor. 27 L. R. A. (N. S.) 164; 50 L. R. A. (N. S.) 929.

§ 9918. [8313.] Abatement Does not Preclude Action.

The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. [L. '75, p. 79, § 6; Cd. '81, § 1240; 1 H. C., § 2887.]

§ 9919. [8314.] Lapse of Time Does not Legalize.

No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right. [L. '75, p. 80, § 7; Cd. '81, § 1241; 1 H. C., § 2888.]

§ 9920. [8315.] Remedies Against Public Nuisance.

The remedies against a public nuisance are indictment (or information), a civil action, or abatement. The remedy by indictment (or information) shall be as regulated and prescribed in this title. When a civil action for damage is resorted to the practice shall conform to the provisions of sections 943 to 946, supra. [L. '75, p. 80, § 8; Cd. '81, § 1242.]

Cited in 21 Wash. 538, 546.

Actions by Public Officers: See Remington's Digest, Nuis., § 26; *Moore v. Walla Walla*, 2 W. T. 184, 2 Pac. 187; *State ex rel. Dow v. Nichols*, 83 Wash. 676, 145 Pac. 986.

Pleading and Relief: See Remington's Digest, Nuis., §§ 27—28; *Coffer v. Territory*, 1 Wash. 325, 25 Pac. 632, 11 L. R.

A. 296; *Moore v. Walla Walla*, 2 W. T. 184, 2 Pac. 187; *State v. Terry*, 99 Wash. 1, 168 Pac. 513; *State ex rel. Kern v. Jerome*, 80 Wash. 261, 141 Pac. 753; *Simon Piano Co. v. Fairfield*, 103 Wash. 206, 173 Pac. 457.

Necessity of knowledge by owner of real estate of a nuisance maintained thereon by another, to subject him to the operation of the

statute providing for the abatement of nuisances. 12 A. L. R. 431.

Proximate cause as determining landlord's liability where injury results to a third person from a nuisance that becomes such only upon ten-

ant's using the premises. 4 A. L. R. 740.

Liability of former owner of real estate because of violation of statute or ordinance relating to condition of premises. 8 A. L. R. 356.

§ 9921. [8316.] Civil Action.

A private person may maintain a civil action for a public nuisance, if it is specially injurious to himself, but not otherwise. [L. '75, p. 80, § 9; Cd. '81, § 1243; 1 H. C., § 2890.]

Cited in 21 Wash. 538, 546; 35 Wash. 595; 56 Wash. 309; 58 Wash. 569; 61 Wash. 290.

Rights of Private Persons: See Remington's Digest, Nuis., §§ 15—24.

Special Annoyance, Injury or Danger to Individuals: Morris v. Graham, 16 Wash. 343, 47 Pac. 752, 58 Am. St. Rep. 33; Cherry Point Fish Co. v. Nelson, 25 Wash. 558, 66 Pac. 55; Dawson v. McMillan, 34 Wash. 269, 75 Pac. 807; Carl v. West Aberdeen etc. Co., 13 Wash. 616, 43 Pac. 890; Smith v. Mitchell, 21 Wash. 536, 58 Pac. 667, 75 Am. St. Rep. 858, Sultan Water & P. Co. v. Weyerhauser Tim. Co., 31 Wash. 558, 72 Pac. 114; Grantham v. Gibson, 41 Wash. 125, 83 Pac. 14, 111 Am. St. Rep. 1003, 3 L. R. A. (N. S.) 447. See, also:

Rights of Private Parties—Special Damages: Olsen v. Bremerton, 110 Wash. 572, 188 Pac. 772.

§ 16. **Prescription as Against Individuals:** Ingersoll v. Rousseau, 35 Wash. 92, 76 Pac. 513, 1 Ann. Cas. 35.

§ 18. **Actions for Abatement or Injunction—In General:** Carl v. West Aberdeen, Land etc. Co., 13 Wash. 616, 43 Pac. 890; Jones v. St. Paul etc. R. Co., 16 Wash. 25, 47 Pac. 226.

§ 19. — **Grounds for Abatement or Injunction:** Ingersoll v. Rousseau, 35 Wash. 92, 76 Pac. 513, 1 Ann. Cas. 35; Wilcox v. Henry, 35 Wash. 591, 77 Pac. 1055; Dempsie v. Darling, 39 Wash. 125, 81 Pac. 152. See, also, Grant v. Rosenberg, 112 Wash. 361, 192 Pac. 889.

§ 20. — **Defenses:** Ingersoll v. Rousseau, 35 Wash. 92, 76 Pac. 513, 1 Ann. Cas. 35; Wilcox v. Henry, 35 Wash. 591, 77 Pac. 1055; Winsor v. Hanson, 40 Wash. 423, 82 Pac. 710; State ex rel. Kern v. Jerome, 80 Wash. 261, 141 Pac. 753.

§ 21. **Parties:** Grantham v. Gibson, 41 Wash. 125, 83 Pac. 14, 111 Am. St. Rep. 1003, 3 L. R. A. (N. S.) 447; Kirkland v. Ferry, 45 Wash. 663, 88 Pac. 1123; State v. Knutson, 81 Wash. 47, 142 Pac. 444; State v. Terry, 99 Wash. 1, 168 Pac. 513.

§ 22. — **Pleading:** Northern Pac. R. Co. v. Whalen, 3 W. T. 452, 17 Pac. 890; Grantham v. Gibson, 41 Wash. 125, 83 Pac. 14, 111 Am. St. Rep. 1003, 3 L. R. A. (N. S.) 447.

§ 23. — **Relief Awarded and Judgment or Decree:** Carl v. West Aberdeen Land etc. Co., 13 Wash. 616, 43 Pac. 890; Wilcox v. Henry, 35 Wash. 591, 77 Pac. 1055. See, also:

Judgment of Contempt—When Harmless: Olsen v. Bremerton, 110 Wash. 572, 188 Pac. 772.

Suppression of Business: Grant v. Rosenberg, 112 Wash. 361, 192 Pac. 889.

§ 24. **Action for Damages:** Wilson v. West & Slade Mill Co., 28 Wash. 312, 68 Pac. 716.

Right to enjoin threatened or anticipated nuisance. 7 A. L. R. 749.

Injunction to prevent establishment or maintenance of garbage or sewage disposal plant. 5 A. L. R. 920.

Nuisance resulting from smoke alone as subject for injunctive relief. 6 A. L. R. 1575.

Right of tenant to recover damages from third person for injury to premises by nuisance. 8 A. L. R. 611.

Joint liability of independent tortfeasors for nuisance. 9 A. L. R. 952.

§ 9922. [8317.] Abatement by Whom.

A public nuisance may be abated by any public body or officer authorized thereto by law. [L. '75, p. 80, § 10; Cd. '81, § 1244; 1 H. C., § 2891.]

What constitutes public nuisance, see section 9912, supra.

Abatement by Public Officers: See Remington's Digest, Nuis., §§ 25, 25-1; Moore v. Walla Walla, 2 W. T. 184, 2 Pac. 187; Spokane St. R. Co. v. Spokane Falls, 6

Wash. 521, 33 Pac. 1072; Griffith v. Holman, 23 Wash. 347, 63 Pac. 239, 83 Am. St. Rep. 821, 54 L. R. A. 178; Richards v. Seattle, 62 Wash. 684, 114 Pac. 896.

§ 9923. [8318.] How Abated.

Any person may abate a public nuisance which is specially injurious to him, by removing, or if necessary destroying, the thing which constitutes the same, without committing a breach of the peace or doing unnecessary injury. [L. '75, p. 80, § 11; Cd. '81, § 1245; 1 H. C., § 2892.]

See supra, § 2503, abatement authorized, when.

The obstructing of a public road by building a fence therein is a nuisance which may be abated by any person injuriously affected thereby, provided it be done without committing a breach of the peace, or doing unnecessary injury: Johnson v. Maxwell, 2 Wash. 482, 27 Pac. 1071.

§ 9924. [8319.] Certain Places of Resort Declared Nuisances—Penalty.

Houses of ill fame, kept for the purpose, in which are embraced all squaw dance-houses, or squaw brothels, otherwise called mad houses; all houses, rooms, saloons, booths, scows, boats, or other structures used as a place of resort, where women are employed to draw custom, dance, or for purposes of prostitution; all public houses or places of resort where gambling is carried on or permitted; all houses or places within any city, town, or village, or upon any public road or highway, where drunkenness, gambling, fighting, or breaches of the peace are carried on or permitted; all opium dens or houses, or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business, shall be punished as provided in this chapter. [L. '75, p. 81, § 13; Cd. '81, § 1247; 1 H. C., § 2894.]

Prosecution, see Remington's Digest "Disorderly House," §§ 1—5, and cases cited.

Cited in 1 Wash. 167; 7 Wash. 11; 51 Wash. 36; 74 Wash. 296; 99 Wash. 48.

The keeping and having in charge of a public house or resort and engaging in betting, winning, and losing money in selling pools on horseraces to persons congregating and resorting in such place for that purpose, may be informed against under this section: State v. Shanklin, 51 Wash. 35, 97 Pac. 35.

Under this section, it is necessary to allege that the character of the women employed or their deportment was such as to tend to draw together crowds of disorderly persons or to corrupt the morals of those resorting to the place: State v. Brown, 7 Wash. 10, 34 Pac. 132; State v. Clancy, 99 Wash. 47, 168 Pac. 894.

§ 9925. [8320.] Punishment and Abatement.

Whoever is convicted of erecting, causing, or contriving a public or common nuisance, as described in this title, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding one thousand dollars, and the court, with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided. [L. '75, p. 81, § 14; Cd. '81, § 1248; 1 H. C., § 2896.]

"Title" substituted for "chapter." The act of November 12, 1875, as given in the Code of 1881, except as modified by subsequent legislation, constitutes this title.

Cited in 8 Wash. 582, 583; 74 Wash. 18 Wash. 579, 36 Pac. 487; State v. Schaffer, 31 Wash. 305, 71 Pac. 1088.

Indictment or Information: See Remington's Digest, Nuis., § 31; State v. Brown, 7 Wash. 10, 34 Pac. 132; State v. Paggett, Issues, Proof, Evidence and Order: See Remington's Digest, Nuis., §§ 31-1, 32; State v. Schaefer, 45 Wash. 9, 87 Pac. 949;

State v. Paggett, 8 Wash. 579, 36 Pac. 487; State v. Horlacher, 16 Wash. 325, 47 Pac. 748; State v. Terry, 99 Wash. 1, 168 Pac. 513.

Indictment of street railway company for maintaining public nuisance be-

cause of overcrowding of cars. 6 A. L. R. 134.

Criminal responsibility of married women for nuisance. 4 A. L. R. 282.

§ 9926. [8321.] Process.

When, upon indictment (or information), complaint or action, any person is adjudged guilty of a nuisance, the court before whom such conviction is had may, in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated or removed, at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor. When the conviction is had upon an action before a justice of the peace, and no appeal is taken, the justice, after estimating, as aforesaid, the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant. [L. '75, p. 81, §§ 15, 16; Cd. '81, §§ 1249, 1250; 1 H. C., §§ 2896, 2897.]

§ 9927. [8322.] Stay of Warrant—Bond.

Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into a bond in such sum and with such surety as the court may direct to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court, and upon his default to perform the condition of his bond, the same shall be forfeited, and the court, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and a rule to show cause why judgment should not be entered against the sureties of said bond. [L. '75, p. 81, § 17; Cd. '81, § 1251; 1 H. C., § 2898.]

See supra, § 946, stay in action for private nuisance.

§ 9928. [8323.] Costs of Abating Nuisance.

The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant or to the owner of the property levied upon, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [L. '75, p. 82, § 18; Cd. '81, § 1252; 1 H. C., § 2899.]

Nurseries. See "Agriculture," § 2839.

Nurses. See "Physicians," § 10164.

Oaths. See §§ 1264—1269.

Of state officers, see "State Officers." § 10965.

OFFICERS.

TITLE LXIV.

OFFICERS.

See "Counties," § 4028; "Municipal Corporations"; "State Officers."

Of school districts: See "Education," § 4775.

Of state institutions: See "State and State Boards."

Crimes by and against: See §§ 2320—2434.

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CHAPTER I.

ELECTIVE PUBLIC OFFICERS.

§ 9929. Qualifications of Public Officers.

That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision. [L. '19, p. 390, § 1.]

Who are Public Officers: See Remington's Digest, Offic., § 2; Ward v. Moorey, 1 W. T. 104; State v. Womack, 4 Wash. 19, 29 Pac. 939; Bartels v. Gove, 4 Wash. 632, 30 Pac. 675; State ex rel. Griffith v. Newland, 37 Wash. 428, 79 Pac. 983.

See, also, State ex rel. French v. Clausen, 107 Wash. 667, 182 Pac. 610.

ELIGIBILITY AND QUALIFICATION: See Remington's Digest, Offic., §§ 5—16, and cases cited.

TITLE TO AND POSSESSION OF OFFICE: See Remington's Digest, Offic., §§ 30—52.

Estoppel to Deny Title to Office: Spokane County v. Allen, 9 Wash. 229, 37 Pac. 428, 43 Am. St. Rep. 830.

§ 31. — **Collateral Inquiry into Title or Right to Office:** Northwestern Lum. Co. v. Chehalis County, 25 Wash. 95, 64 Pac. 909, 87 Am. St. Rep. 747, 54 L. R. A. 212.

§ 32. — **Presumptions as to Title or Right:** State v. Humason, 5 Wash. 499, 32 Pac. 111.

§ 33. **Ouster:** Hill v. Territory, 2 W. T. 147, 7 Pac. 63.

§ 34. **Injunction to Restrain Occupancy of Office:** Mullen v. Tacoma, 16 Wash. 82, 47 Pac. 215; State ex rel. Fairbanks v. Superior Court, 17 Wash. 12, 48 Pac. 741, 61 Am. St. Rep. 893.

§ 35. **Actions and Other Proceedings for Recovery of Office:** State ex rel. Heilbron v. Van Brocklin, 8 Wash. 557, 36 Pac. 495; State ex rel. Niggle v. Kirkwood, 15 Wash. 298, 46 Pac. 331; Kimball v. Olmsted, 20 Wash. 629, 56 Pac. 377; Standard Gold Min. Co. v. Byers, 31 Wash. 100, 71 Pac. 766.

§ 36. **Possession of Office Pending Contest:** State ex rel. Mullen v. Superior Court, 15 Wash. 376, 46 Pac. 402.

§ 37. **Summary Proceedings for Recovery of Books, Papers and Other Appurtenances:** State ex rel. Byers v. Superior Court, 28 Wash. 403, 68 Pac. 865.

§ 38. **Compensation and Fees—In General:** School Dist. No. 81 v. Cole, 4 Wash.

395, 30 Pac. 448; Young v. Millett, 19 Wash. 486, 53 Pac. 823; State ex rel. Ames v. Gasch, 9 Wash. 226, 37 Pac. 427.

§ 39. **Occupancy of Office by De Facto Officers:** Samuels v. Harrington, 43 Wash. 603, 86 Pac. 1071, 117 Am. St. Rep. 1075; Bartholomew v. Springdale, 91 Wash. 408, 157 Pac. 1090, Ann. Cas. 1918B, 432.

§ 40. **Deputies and Assistants:** Nelson v. Troy, 11 Wash. 435, 39 Pac. 974; Dillon v. Whatcom County, 12 Wash. 391, 41 Pac. 174.

§ 41. — **Abolition of Office or Diminution or Cessation of Duties or Shortening of Term:** Mudgett v. Liebes, 14 Wash. 482, 45 Pac. 19; Bogue v. Seattle, 19 Wash. 396, 53 Pac. 548.

§ 42. — **Recovery Back of Illegal Fees:** Tacoma v. Lillis, 4 Wash. 797, 31 Pac. 321, 18 L. R. A. 372.

§ 43. — **Increase or Reduction of Compensation:** Tacoma v. Lillis, 4 Wash. 797, 31 Pac. 321, 18 L. R. A. 372; James v. Seattle, 22 Wash. 654, 62 Pac. 84, 79 Am. St. Rep. 957; State ex rel. Seattle v. Carson, 6 Wash. 250, 33 Pac. 428; Heilig v. Puyallup City Council, 7 Wash. 29, 34 Pac. 164; Nelson v. Troy, 11 Wash. 435, 39 Pac. 974; Mudgett v. Liebes, 14 Wash. 482, 45 Pac. 19; Young v. Millett, 19 Wash. 486, 53 Pac. 823; State ex rel. Eshelman v. Cheetham, 21 Wash. 437, 58 Pac. 771; State ex rel. Ross v. Clausen, 47 Wash. 607, 92 Pac. 453; State ex rel. Funke v. Board of Commrs., 48 Wash. 461, 93 Pac. 920.

See, also, State ex rel. Port of Seattle v. Wardall, 107 Wash. 606, 183 Pac. 67.

— **Additional Duties:** State ex rel. Younger v. Clausen, 111 Wash. 241, 190 Pac. 324; State ex rel. Bagley v. Clausen, 111 Wash. 254, 190 Pac. 329.

§ 44. **Offices and Officers Within Inhibition:** State ex rel. Thurston County v. Grimes, 7 Wash. 445, 35 Pac. 361; Ballard v. Keane, 13 Wash. 204, 43 Pac. 27; State ex rel. Eshelman v. Cheetham, 21 Wash. 437, 68 Pac. 771.

§ 45. **Authority and Powers—In General:** Young v. State, 19 Wash. 634, 54 Pac. 36.

§ 46. — **Review of Facts on Which Authority to Act is Based:** State ex rel. Megler v. Forrest, 13 Wash. 268, 43 Pac. 51.

§ 47. — **De Facto Officers:** State v. Holmes, 12 Wash. 169, 40 Pac. 735, 41 Pac. 887; State v. Fountain, 14 Wash. 236, 44 Pac. 270.

§§ 48, 49. **Duties and Performance Thereof—New or Additional Duties:** State ex rel. Seattle v. Carson, 6 Wash. 250, 33 Pac. 428.

§ 50. — **Time for Performance of Official Acts:** State ex rel. Eshelman v. Cheetham, 21 Wash. 437, 58 Pac. 771.

§ 51. — **Presumption as to Discharge of Duties:** Kimball v. School District No. 122, 23 Wash. 520, 63 Pac. 213; Templeton v. Pierce County, 25 Wash. 377, 65 Pac. 553; State ex rel. Attorney Gen. v. Seattle Gas etc. Co., 28 Wash. 488, 68 Pac. 946, 70 Pac. 114; Hays v. Hill, 23 Wash. 730, 63 Pac. 576.

§ 52. **Custody and Care of Public Funds:** Marx v. Parker, 9 Wash. 473, 37 Pac. 675, 43 Am. St. Rep. 849.

Criminal Responsibility: See Remington's Digest, Offic., § 52-1; State v. Case, 88 Wash. 664, 153 Pac. 1070.

CHAPTER II.

OFFICIAL BONDS.

§ 9930. [8324.] Form and Conditions of.

All official bonds required by law of officers shall be in form joint and several, and made payable to the state of Washington, in such penal sum and with such conditions as may be required by law. [L. '90, p. 34, § 1; 1 H. C., § 2900.]

See supra, §§ 958—966, action on official bonds.

See supra, §§ 7246, 7247, surety companies' bonds may be accepted.

Cited in 30 Wash. 615.

Informalities or irregularities which do not invalidate official bonds. 15 Am. Dec. 170; 40 Am. St. Rep. 51; 90 Am. St. Rep. 188.

Validity of statute providing for payment of premium on official bond by state, county, etc. Ann. Cas. 1913D, 715; Ann. Cas. 1918A, 603.

§ 9931. [8325.] Effect of.

Every official bond executed by any officer pursuant to law shall be deemed and taken to be in force, and shall be obligatory upon the principal and sureties therein for any and all breach of the condition or conditions thereof committed during the time such officer shall continue to discharge any of the duties of or hold such office, and every such bond shall be deemed to be in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequent to the execution of such bond, and such condition shall be expressed therein. [L. '90, p. 34, § 2; 1 H. C., § 2901.]

Cited in 21 Wash. 670; 24 Wash. 432; 97 Wash. 616.

The fact that an incumbent of an office failed to give a new bond after the expiration of the two years would not disqualify him for the office, since this section makes the old bond sufficient, during the time such officer shall continue to hold such office.—State ex rel. Meredith v. Tallman, 24 Wash. 426, 64 Pac. 759.

LIABILITIES ON OFFICIAL BONDS: See Remington's Digest, Offic., §§ 53—59.

§ 53. **Nature of Obligation:** Ihrig v.

Scott, 13 Wash. 559, 43 Pac. 633; Weber v. Doust, 81 Wash. 668, 143 Pac. 148.

§ 55. — **Estoppel to Deny Validity or Liability:** Walla Walla County v. Ping, 1 W. T. 339; King County v. Ferry, 5 Wash. 536, 32 Pac. 538, 34 Am. St. Rep. 880, 19 L. R. A. 500; Fairhaven v. Cowgill, 8 Wash. 686, 36 Pac. 1093.

§ 56. **Discharge of Sureties:** King County v. Ferry, 5 Wash. 536, 32 Pac. 538, 34 Am. St. Rep. 880, 19 L. R. A. 500; Fairhaven v. Cowgill, 8 Wash. 686, 36 Pac. 1093.

§ 57. **Extent of Liability:** Spokane County v. Allen, 9 Wash. 229, 37 Pac. 428, 43 Am. St. Rep. 830; Marquis v. Willard, 12 Wash. 528, 41 Pac. 889, 50 Am. St. Rep. 906; Skagit County v. American Bonding Co., 59 Wash. 8, 109 Pac. 199.

§ 58. — **Time:** King County v. Ferry, 5 Wash. 536, 32 Pac. 538, 34 Am. St. Rep. 880, 19 L. R. A. 500; Ballard v. Thompson, 21 Wash. 669, 59 Pac. 517.

§ 58½. — **Duties Required or Funds Held in Different Capacities:** Snohomish County v. Ruff, 15 Wash. 637, 47 Pac. 35, 441.

§ 59. — **Loss of Funds Through Failure of Depository:** Kittitas County v. Travers, 16 Wash. 528, 48 Pac. 340; Fairchild v. Hedges, 14 Wash. 117, 44 Pac. 125, 31 L. R. A. 851.

Liability of sureties on official bond after expiration of term of office.

103 Am. St. Rep. 932; 1 Ann. Cas. 383; Ann. Cas. 1912D, 293; 35 L. R. A. 88.

Liability of surety on bond of public officer for default of principal during prior term. 23 L. R. A. (N. S.) 131.

Liability on bond of officer for defaults and misfeasances of his clerks, assistants or deputies. 1 A. L. R. 222; 12 A. L. R. 980.

Liability on general bond of public officer for acts covered by a special bond. 4 A. L. R. 1431.

Leave of court as prerequisite to action on official bond. 2 A. L. R. 563.

Liability of sureties on police officer's bond for unlawful arrest without a warrant. 3 A. L. R. 1623.

§ 9932. [8326.] Who may Maintain Action on.

Every official bond executed by any officer pursuant to law shall be in force and obligatory upon the principal and sureties therein to and for the state of Washington, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond in his or her own name without an assignment thereof. [L. '90, p. 34, § 3; 1 H. C., § 2902.]

See notes to § 4169, supra, liability of sheriff on.

Actions: See Remington's Digest, Offic., §§ 60—64.

§ 60. **Conditions Precedent:** Nye v. Kelly, 19 Wash. 73, 52 Pac. 528; Hunter v. Berridge, 103 Wash. 536, 175 Pac. 165.

§ 61. — **Defenses:** Spokane County v. Allen, 9 Wash. 229, 37 Pac. 428, 43 Am. St. Rep. 830; Skagit County v. American Bonding Co., 59 Wash. 1, 109 Pac. 197.

§ 62. — **Parties:** Nye v. Kelly, 19 Wash. 73, 52 Pac. 528.

§ 63. — **Pleading:** King County v. Ferry, 5 Wash. 536, 32 Pac. 538, 34 Am. St. Rep. 880, 19 L. R. A. 500.

§ 64. — **Evidence:** Fairhaven v. Cowgill, 8 Wash. 686, 36 Pac. 1093; King County v. Whittlesey, 52 Wash. 206, 100 Pac. 320.

§ 9933. [8327.] Defective—Recovery on.

Whenever any such official bond shall not contain the substantial matter or condition or conditions required by law, or there shall be any defect in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be bound to the state or party interested, and the state or such party may, by action instituted in any court of competent jurisdiction, suggest the defect of such bond or such approval or filing, and recover his proper and equitable demand or damages from such officer and the person or persons who intended to become and were included in such bond as sureties. [L. '90, p. 35, § 4; 1 H. C., § 2903.]

See supra, § 777, bonds not to fail for want of form.

Cited in 99 Wash. 376.

Insufficient, Informal or Defective Bond:
See Remington's Digest, Offic., § 54; Walla Walla County v. Ping, 1 W. T. 339; State v. Bokien, 14 Wash. 403, 44 Pac. 889; Tumwater v. Hardt, 28 Wash. 684, 69 Pac. 378, 92 Am. St. Rep. 901.

Failure of principal to sign official bond as affecting liability of surety. 2 Ann. Cas. 226.

Validity and effect of bond having less than required number of sureties. 9 Ann. Cas. 711.

Right of action on bond naming obligee other than one designated by statute. 3 Ann. Cas. 456.

§ 9934. [8328.] By Whom Approved, and Where Filed.

The official bonds of officers shall be approved and filed as follows, to wit: The official bond of the secretary of state shall be approved by the governor and filed and recorded in the office of the county clerk of the county in which the seat of government is fixed. The official bond[s] of all other state officers required by law to give bond[s], except as otherwise expressly provided by law, shall be approved by the governor, filed and recorded in the office of the secretary of state. The official bond[s] of all county and township officers shall be approved by the board of county commissioners, if in session, and if not in session, by the chairman of such board and filed and recorded in the office of the county clerk of their respective counties: Provided, that the bond of the county clerk shall be filed and recorded in the office of the county auditor or recorder of the proper county. [L. '90, p. 35, § 5; 1 H. C., § 2904.]

§ 9935. [8329.] Procedure When Bond Becomes Insufficient.

Whenever the sureties, or any one of them, in the official bond of any county or township officer shall die, remove from the state, become insolvent or insufficient, or the penalty of such bond shall become insufficient on account of recoveries had thereon, or otherwise, it shall be the duty of the board of county commissioners of the proper county, of their own motion, or on the showing of any person supported by affidavit, to summon any such officer to appear before them at a stated time, not less than five days after service of such summons, and show cause why he should not execute an additional official bond with good and sufficient sureties. [L. '90, p. 35, § 6; 1 H. C., § 2905.]

Cited in 48 Wash. 428; 53 Wash. 550.

§ 9936. [8330.] Additional Bond may be Required—Effect of Failure to File.

Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his absence; if after examination the board of county commissioners shall be of opinion that the bond of such officer has become insufficient from any cause whatever, they shall require an additional bond, with such security as may be deemed necessary, which said additional bond shall be executed and filed within such time as the board of county commissioners may order; and if any such officer shall fail to execute and file such additional bond within the time prescribed by such order, his office shall become vacant. [L. '90, p. 36, § 7; 1 H. C., § 2906.]

Cited in 53 Wash. 550.

§ 9937. [8331.] Remedy Where Bond of State Officer Becomes Insufficient.

Whenever the official bond of any state officer shall become insufficient from any cause whatever, the like proceedings may be had before the superior court of the county in which said state officer holds his office with reference thereto: Provided, that such proceedings may be commenced by a written motion, supported by affidavit. [L. '90, p. 36, § 8; 1 H. C., § 2907.]

§ 9938. [8332.] Force and Obligation of Additional Bond.

Every such additional bond shall be of like force and obligation upon the principal and sureties therein, and shall subject the officer and his sureties to the same liabilities, as are prescribed respecting the original bonds of officers. [L. '90, p. 36, § 9; 1 H. C., § 2908.]

§ 9939. [8333.] Number of Sureties Required.

Unless otherwise expressly provided, there shall be at least two sureties upon the official bond of every officer. [L. '90, p. 36, § 10; 1 H. C., § 2909.]

See supra, § 974 et seq., action to protect sureties.
See next chapter, release of sureties.

Cited in 28 Wash. 686.

§ 9940. [8334.] Justification of Sureties.

In all cases where official bonds are required or may be hereafter required, from state, county, township or precinct officers, the officer or officers whose duty it is or may be to approve such bonds, shall not accept or approve any such bonds except such bond be that of a surety company, unless the sureties thereon shall severally justify before an officer authorized to administer oaths as follows: (1) On a bond given by a state or county officer that he is a resident and freeholder within this state, and on a bond given by a township or precinct officer that he is a resident and freeholder within the county in which such township or precinct is situated; (2) that he is worth double the amount for which he becomes surety over and above all his debts and liabilities, in property situated within this state which is not exempt from seizure and sale under execution. [L. '90, p. 36, § 11; 1 H. C., § 2910; L. '01, p. 13, § 1.]

Cited in 28 Wash. 686.

§ 9941. [8335.] Sureties' Liability, Limitation.

When the penal sum of any bond amounts to more than two thousand dollars, the sureties may become severally liable for portions not less than five hundred dollars, of such penal sum, making in the aggregate at least two sureties for the whole penal sum. [L. '90, p. 37, § 12; 1 H. C., § 2911.]

Cited in 8 Wash. 690.

CHAPTER III.

RELEASE OF SURETIES ON OFFICIAL BONDS.

§ 9942. [8336.] Surety may be Released, When.

Any surety on the official bond of any state, county, or city officer, or on the official bond of any executor or administrator, or on the bond or undertaking of any person where by law a bond or undertaking is required, may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this chapter. [L. '90, p. 43, § 1; 1 H. C., § 2912.]

See *supra*, § 974 et seq., action for protection of sureties.

Validity of statute providing for release of surety from liability. *Ann. Cas.* 1912A, 73.

Bankruptcy discharge as affecting lia-

bility of surety on official bond. 4 *Ann. Cas.* 66.

Liability on official bond after resignation. 35 *L. B. A.* 93.

§ 9943. [8337.] Proceedings to Obtain Release of—Statement—Notice.

Any surety desiring to be released from liability on the bond of any state officer shall file with the governor or secretary of state a statement in writing, duly subscribed by himself, or some one in his behalf, setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof. A notice containing the object of such statement shall be served personally on the officer, unless he shall have left the state, in which case the same may be served by publication for twenty days in some newspaper printed at the seat of government, or if none be printed there, then in such newspaper as shall be designated by the governor or secretary of state. Any surety desiring to be released from the official bond of any county officer shall file and serve a similar statement; the statement, except when it concerns the county clerk personally, shall be filed with the county clerk, and when the county clerk is personally concerned, the statement shall be filed with the county auditor or treasurer. Any surety desiring to be released from liability on the bond of any city officer shall file and serve a similar statement with the city clerk or other proper officer. Any surety desiring to be released from an executor's or administrator's bond or undertaking shall file and serve a similar statement with the clerk of the superior court. Any surety desiring to be released from any other official bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority. All statements provided for in this section must be served as in the first clause of this section provided: Provided, the same, if served by publication, may be published in the newspaper in the same, or if no newspaper be published therein, then in an adjoining or other county, without any order from any court or other authority: Provided further, in all cases for which publication is provided, a printed or written notice posted in at least ten conspicuous places in the county for the time specified shall be deemed legal notice thereof. [L. '90, p. 43, § 2; 1 H. C., § 2913.]

**§ 9944. [8338.] Failure to File New Bond Vacates Office, When—
Vacancy, etc.**

If any officer or person shall fail to file, within ten days from the date of personal service, or within thirty days from the date of the first insertion of a publication or posted notice, a new or additional bond or undertaking, the office or appointment of the person or officer so failing shall become vacant, and such officer or person shall forfeit his office or appointment, and the same shall be filled as in other cases of vacancy, and in manner provided by law; and the person applying to be released from liability on such bond or undertaking shall not be holden or liable thereon after the date herein provided for the vacating and forfeiting of such office or appointment: Provided, if a number of sureties on any such bond or undertaking representing half the amount of the penalty thereof shall unite in the same, or file and serve separate statements as herein provided, the right of such officer or person to exercise the duties or functions of his office or appointment shall immediately cease, until he shall file and have accepted and approved a new or additional bond or undertaking. Whenever, by operation of this chapter, the functions of any sheriff shall become suspended, it shall be the duty of the clerk, with whom the statement as hereinbefore provided shall have been filed, to notify the acting coroner of the county forthwith of such suspension; and upon being so notified, such coroner shall succeed to all the powers and discharge all the duties of sheriff of his county, pending such suspension of the functions of sheriff. [L. '90, p. 44, § 3; 1 H. C., § 2914.]

§ 9945. [8339.] Liability of Sureties Where New Bond is Given.

In case a new or additional undertaking be filed, the sureties on the original not asking to be released, and on the new or additional bond or undertaking, shall be and continue liable for the official acts of such officer or person, jointly and severally, the same as if all were sureties on one and the same instrument. [L. '90, p. 45, § 4; 1 H. C., § 2915.]

§ 9946. [8340.] Amount of New Undertaking, How Determined.

Whenever a statement is filed, or filed and served as herein provided, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed; and if no such order be made, then such new or additional bond or undertaking shall be executed for the same amount as the original. [L. '90, p. 45, § 5; 1 H. C., § 2916.]

Cited in 32 Wash. 274.

CHAPTER IV.

TRAVELING EXPENSE VOUCHERS.

§ 9947. [8341.*] Certified Vouchers for Expenses.

Hereafter no state or county officer shall be allowed by the state auditor, or board of county commissioners, or any other officer or board charged with the auditing of accounts, any sum or sums of money whatsoever for railroad or steamboat transportation, horse hire or other conveyance, hire of any kind whatsoever, or for hotel or restaurant subsistence, or any other expense, unless the same shall be presented in an account duly sworn to before some officer authorized to administer oaths, and, also attested by a voucher or vouchers duly and regularly signed by the person or agent furnishing said railroad, steamboat, horse or other conveyance hire, hotel or restaurant subsistence for all items of expenditure exceeding fifty cents which said voucher or vouchers must, before the signing thereof by said proprietor or authorized agent, be first written out in full, plainly giving the date of the same, the amount paid, and for what purpose so paid, and in case the same is paid for railroad or steamboat hire at an office which has a regular dater-stamp used in the stamping of railroad or steamboat tickets, then in addition to the signature of the agent thereof, said dater-stamp shall be impressed thereon. Provided, that, it shall not be necessary for any state officer, his deputies or assistants, to accompany said account with signed vouchers for items of expenditure, but it shall be sufficient if the accounts presented by such persons shall show in detail such items of expenditure on forms prescribed by the bureau of inspection and supervision of public offices and sworn to before some officer authorized to administer oaths. Such accounts together with all vouchers, shall, upon approval and allowance of the officer or board charged with that duty, be plainly marked or stamped with the date of allowance, and duly filed in a safe place in such office, and safely kept for the period of at least three years: Provided, the same shall be at all times open to public inspection. Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor. [L. '19, p. 258, § 1; L. '99, p. 106, § 1.]

§ 9948. [8342.] Form of Verification.

Each state or county officer making a claim before any state auditor, board of county commissioners, or any other officer or board authorized to audit claims, shall in addition to the presentation of the said vouchers, have the same accompanied with the following oath or affirmation:

State of Washington, }
County of —, } ss.

I, —, holding the office of —, having herewith presented my account for expenses for the period ending —, accompanied by vouchers numbered — to — inclusive, amounting to the sum of — dollars, I do hereby, having been first duly sworn, depose and say: That the foregoing account is just and true as therein stated, that no payment has been received by me on account thereof; that no

rebate of any character, kind or description has been made to me by any person or persons furnishing any of said railroad or steamboat transportation, horse hire or subsistence; that the expenses charged were actually and necessarily incurred and paid by me in lawful money; and that each voucher herewith accompanying said account was actually written out and duly signed by the person whose signature thereon appears at the time of the payment of said money and before the delivery of the same to me, and the amount thereon was mutually understood.

Subscribed and sworn to before me this — day of —, A. D. —.
—, Notary Public.

[L. '99, p. 107, § 2.]

CHAPTER V.

RESIGNATIONS AND VACANCIES.

§ 9949. [8343.] Resignations to be Made to Whom.

Resignations shall be made as follows: By the state officers and members of the legislature to the governor; by all county officers to the county commissioners of their respective counties; by all other officers, holding their offices by appointment, to the body, board, or officer that appointed them. [L. '66, p. 28, § 1; Cd. '81, § 3062; 1 H. C., § 341.]

See Art. II, § 15, of the Const., vacancy in legislature, how filled.

See Art. III, § 13, of the Const., governor to fill vacancy when.

See Art. IV, §§ 3 and 5, of the Const., governor to fill vacancy, when.

See Art. IV, § 8, of the Const., absence of judicial officer creates vacancy, when.

See Art. XI, § 6, of the Const., vacancies to be filled by county commissioners.

See notes to Art. II, § 8, of Const.

See supra, §§ 4224, 4225, vacancy for extortion or failure to account for fees collected.

TERM OF OFFICE, VACANCIES AND HOLDING OVER: See Remington's Digest, Offic., §§ 17—25.

§ 17. Constitutional and Statutory Provisions: Davidson v. Carson, 1 W. T. 307; McMurray v. Hollis, 5 Wash. 458, 32 Pac. 293; State ex rel. Hays v. Twichell, 9 Wash. 530, 38 Pac. 134.

§ 18. Extent of Term in General: State ex rel. Hays v. Twichell, 9 Wash. 530, 38 Pac. 134; State ex rel. Meredith v. Tallman, 24 Wash. 426, 64 Pac. 759; Koontz v. Kurtzman, 12 Wash. 59, 40 Pac. 622.

§ 19. Change of Term: Davidson v. Carson, 1 W. T. 307.

§ 20. Holding Over After Expiration of Term: Smalley v. Snell, 6 Wash. 161, 32 Pac. 1062; State ex rel. Meredith v. Tallman, 24 Wash. 426, 64 Pac. 759; State ex rel. Vanderveer v. Gormley, 53 Wash. 543, 102 Pac. 435.

§ 21. Occurrence and Existence of Vacancy: State ex rel. O'Connell v. Nelson, 7 Wash. 114, 34 Pac. 562.

§ 22. — Failure to Properly Qualify: State ex rel. Lysons v. Ruff, 4 Wash. 234, 29 Pac. 999, 16 L. R. A. 140.

§ 24. Election or Appointment to Fill Vacancy: State ex rel. Moody v. Cronin, 5 Wash. 398, 31 Pac. 864.

§ 25. Term of Officer Appointed to Fill Vacancy: State ex rel. Linn v. Millett, 20 Wash. 221, 54 Pac. 1124.

RESIGNATION OR REMOVAL: See Remington's Digest, Offic., §§ 25½—29.

§ 25½. Constitutional and Statutory Provisions: Cudihee v. Phelps, 76 Wash. 314, 136 Pac. 367; State ex rel. Lynch v. Fairley, 76 Wash. 332, 136 Pac. 374; Tabor v. Walla Walla, 77 Wash. 579, 137 Pac. 1040.

§ 25-1. Resignation: State ex rel. Royse v. Superior Court, 46 Wash. 616, 91 Pac. 4, 123 Am. St. Rep. 948, 13 Ann. Cas. 870, 12 L. R. A. (N. S.) 1010.

§ 26. Restrictions of Civil Service Laws and Rules as to Removals: Easson v. Seattle, 32 Wash. 405, 73 Pac. 496.

§ 26½. Recall: Cudihee v. Phelps, 76 Wash. 314, 136 Pac. 367; State ex rel. McCauley v. Gilliam, 81 Wash. 186, 142 Pac. 470; Rominger v. Nellor, 97 Wash. 693, 167 Pac. 57; Thiemens v. Sanders, 102 Wash. 453, 173 Pac. 26.

§ 27. **Proceedings of Administrative Officers—Notice of Charges and Hearings:** State ex rel. McReavy v. Burke, 8 Wash. 412, 36 Pac. 281; State ex rel. Whitney v. Friars, 10 Wash. 348, 39 Pac. 104; State ex rel. Howlett v. Cheetham, 19 Wash. 330, 53 Pac. 349.

§ 28. **Review:** Taylor v. City Council of Tacoma, 15 Wash. 92, 45 Pac. 641; State ex rel. Meredith v. Tallman, 24 Wash. 426, 64 Pac. 759.

§ 29. **Impeachment:** State ex rel. Stearns v. Smith, 6 Wash. 496, 33 Pac. 974.

Person or body to whom resignation from public office should be tendered. 6 **Ann. Cas.** 688; **Ann. Cas.** 1913C, 604.

Necessity of acceptance to complete resignation of office. 23 **L. R. A.** 681; 12 **L. R. A. (N. S.)** 1010; 13 **Ann. Cas.** 873.

Right of public officer to withdraw resignation. 5 **Ann. Cas.** 689; 15 **Ann. Cas.** 139; 16 **L. R. A. (N. S.)** 1058; **L. R. A.** 1917F, 547.

§ 9950. [8344.] Office Becomes Vacant, When.

Every office shall become vacant on the happening of either of the following events before the expiration of the term of such officer:

1. The death of the incumbent;
2. His resignation;
3. His removal;
4. His ceasing to be an inhabitant of the district, county, town, or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged;
5. His conviction of an infamous crime, or of any offense involving a violation of his official oath;
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;
7. The decision of a competent tribunal declaring void his election or appointment;
8. Whenever a judgment shall be obtained against such officer for breach of the condition of his official bond. [L. '66, p. 28, § 2; Cd. '81, § 3063; 1 H. C., § 342.]

See notes to § 9949, *supra*.

See *supra*, § 3975, change of county line, effect.

Cited in 7 Wash. 115; 46 Wash. 623; 53 Wash. 547.

Power to abolish or discontinue office. 4 **A. L. R.** 205.

Removal of public officer for misconduct during previous term. 17 **A. L. R.** 279.

Resignation of one office as affecting

eligibility to another office during term of former office. 5 **A. L. R.** 117.

Term of office of person elected or appointed to fill vacancy in absence of express statutory or constitutional provision. 12 **Ann. Cas.** 572; **Ann. Cas.** 1913D, 619.

§ 9951. [8345.] Term of Person Filling Vacancy.

Whenever any officer resigns his office before the expiration of his term, or the office becomes vacant from any other cause, and at a subsequent special election such vacancy is filled, the person so elected to fill such vacancy shall not hold the office any longer than the original incumbent who resigned would have been entitled to hold the office. [L. '66, p. 30, § 6; Cd. '81, § 3066; 1 H. C., § 343.]

CHAPTER VI.

INSPECTION AND SUPERVISION OF PUBLIC OFFICES.

§ 9952. [8347.] Uniform System of Accounting.

The state auditor, through said bureau, shall formulate, prescribe and install a system of accounting and reporting in conformity with the provisions of this chapter, that shall be uniform for every state office and every state educational, benevolent, penal and reformatory institution, public institution and every public office and every public account of the same class, and which shall exhibit true accounts and detailed statements of funds collected, received and expended for account of the public for any purpose whatever, and by all public officers, employees or other persons, such accounts to show the receipt, use and disposition of all public property, and the income, if any, derived therefrom, and of all sources of public income and the amounts due and received from each source, all receipts, vouchers and other documents kept, or that may be required to be kept, necessary to isolate and prove the validity of every transaction, and all statements and reports made or required to be made, for the internal administration of the office to which they pertain, and all reports published, or that may be required to be published, for the information of the people, regarding any and all details of the financial administration of public affairs. [L. '09, p. 137, § 2.]

"Said bureau" refers to the Bureau of Inspection and Supervision of Public Officers.

See infra, § 10803, duties of state auditor and bureau as to county and city officers devolve upon director of taxation.

See infra, § 10805, duties of state auditor and bureau as to state officers devolve upon director of efficiency.

See infra, § 10893, bureau of inspection and supervision of public officers and public office inspectors and deputy abolished.

The salary provided by Rem. Code, infra, providing for the drawing of a § 8346, was "ascertained and allowed by warrant: State ex rel. Helander v. Clausen," within the meaning of section 11015, sen, 98 Wash. 253, 167 Pac. 947.

§ 9953. [8348.] Separate Accounts for Each Fund.

Separate accounts shall be kept for every appropriation or fund made by a taxing body or legislative, showing date and manner of each payment made out of the funds provided by such appropriation, the name, address and vocation of each person, organization, corporation or association, to whom paid, and for what purpose paid. Separate accounts shall be kept for each department, public improvement, undertaking, institution and public service industry under the jurisdiction of every taxing body, and of the state, and all service rendered by, or property transferred from, one department, public improvement, undertaking, institution or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution or public service industry receiving the same, and no department, public improvement, undertaking, institution or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another department, public improvement, undertaking, institution or public service industry. All unexpended balances or appropriations shall be transferred to the fund from

which appropriated whenever the account with an appropriation is closed. [L. '09, p. 137, § 3.]

See notes to § 9952.

§ 9954. [8349.] Separate Accounts for Public Service Industries.

Separate accounts shall be kept for every public service industry which shall show the true and entire cost of the ownership and operation thereof, the amount collected annually by general or special taxation for service rendered to the public and the amount and character of the service rendered therefor, and the amount collected annually from private users, if any, for service rendered to them, and the amount and character of the service rendered therefor. [L. '09, p. 138, § 4.]

See notes to § 9952.

§ 9955. [8350.] Annual Report of Taxing Districts and Public Institutions—Comparative Statistics.

The state auditor, through said bureau, shall require from every taxing district, state, educational, penal, benevolent and reformatory institution and public institution financial reports covering the full period of each fiscal year, in accordance with the forms and methods prescribed by him, which shall be uniform for all accounts of the same class, which said reports shall be prepared, certified and filed with said bureau within thirty days after the close of each fiscal year by the auditing department of said taxing district or public institution. Such reports shall contain an accurate statement in summarized form of all collections made by or receipts received by the officers from all sources, all accounts due the public treasury but not collected, and of all expenditures for every purpose and by what authority authorized, and also: (a) A statement of all costs of ownership and operation and of all income of each and every public service industry owned and operated by a municipality; (b) a statement of the entire public debt of every taxing district to which power has been delegated by the state to create a public debt, showing the purpose for which each item of the debt was created, the provisions made for the payment of the debt; a classified statement of all receipts and expenditures by any state office, state educational, penal, benevolent and reformatory institution and all public institutions, together with such other information as may be required by the state auditor. Such reports shall be certified as to their correctness by said state auditor, his deputies, the chief inspector and supervisor of public offices, or other person legally authorized to make such certificate. Their substance shall be published in an annual volume of comparative statistics that shall be issued for each class of accounts at the expense of the state as a public document, and shall be submitted by the state auditor to the governor for transmittal to the legislature at the next regular session, or at a special session when required. [L. '09, p. 138, § 5.]

See notes to § 9952.

§ 9956. [8351.] Officers to Keep Accounts—Penalty—Deposit of Collections.

It shall be the duty of every public officer and employee to keep all accounts of his office in the form prescribed and to make all reports

required by the state auditor. Refusal or neglect to perform these duties shall be deemed an offense against the efficiency of public administration and the welfare of the people, and shall be punished by removal from office, after trial and conviction by a court of competent jurisdiction. Every public officer and employee whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him with the treasurer of the taxing district once every twenty-four consecutive hours. In case a public officer or employee collects or receives funds for the account of a taxing district of which he is an officer or employee, he shall, during the Saturday of each week, pay to the proper officer of the taxing district for account of which the collection was made or payment received, the full amount collected or received during the current week for the account of such taxing district. [L. '11, p. 108, § 1. Cf. L. '09, p. 139, § 6.]

See notes to § 9952.

§ 9957. [8352.*] State Examiners—Appointment—Compensation.

After the bureau of inspection and supervision shall have formulated and installed the system of uniform accounting in any or all classes of public offices, the state auditor is hereby empowered to appoint additional assistants as required to administer the provisions of this chapter, said additional assistants shall be known as state examiners, who shall each be paid at the rate of not more than two hundred dollars (\$200) per month for the time necessary to the performance of his duties, and in addition thereto, his railroad fare and three dollars (\$3) per day for his expenses when away from his domicile. [L. '19, p. 289, § 1; L. '11, p. 108, § 1. Cf. L. '09, p. 140, § 7.]

See notes to § 9952.

§ 9958. [8353.] Examination of All Public Offices—Witnesses—Prosecution.

The state auditor, a deputy state inspector and supervisor, and every state examiner shall have power by himself or by any person legally appointed to perform the service, to examine into all financial affairs of every public office and officer; such examination of the financial affairs of townships, incorporated cities and towns and school districts shall be made at least once in every two years; all other examinations shall be made at least once a year. On every such examination inquiry shall be made as to the financial condition and resources of the taxing district; whether the Constitution and statutory laws of the state, the ordinances and orders of the taxing district and the requirements of the bureau of inspection and supervision of public offices have been properly complied with; and into the methods and accuracy of the accounts and reports. The state auditor, his deputies, every state examiner and every person legally appointed to perform such service, shall have and may exercise the necessary authority to issue subpoenas and compulsory process and to direct the service thereof by any constable or sheriff, to compel the attendance of witnesses and the production of books and papers before him at any designated time and place and to administer oaths. Where any person summoned to appear before the

person making such examination and give testimony, shall neglect or refuse to appear, or shall neglect or refuse to answer any question that may be put to him touching any matter under examination, or to produce any books or papers required, the person making such examination shall apply to a superior judge of the proper county to issue a subpoena for the appearance of such person before him; and it shall be the duty of such superior judge to order the issuing of such subpoenas for the appearance of such person forthwith before him to give testimony; and if any person so summoned shall fail to appear or appearing shall refuse to testify or to produce any books or papers required, he shall be subject to like proceedings and penalties for contempt as witnesses in actions pending in the superior court. Willful false swearing in any such examination shall be perjury and shall be punishable as such. A report of such examination shall be made in triplicate, one copy to be filed in the office of the state auditor, one in the auditing department of the taxing district reported upon, and one in the office of the attorney general. If any such examination discloses malfeasance, misfeasance or nonfeasance in office on the part of any public officer or employee, within thirty days from the receipt of such copy of said report, it shall be the duty of the attorney general and he is hereby authorized to institute and prosecute without delay in the proper county such legal action as is proper in the premises by civil process and promptly and efficiently prosecute the same to final determination to carry into effect the findings of any such examination. Before or after such legal action is commenced it shall not be lawful for the county commissioners or any board or officer to make a settlement or compromise of any claim arising out of such malfeasance, misfeasance or nonfeasance or any action commenced therefor or for any court to enter up any compromise or settlement of such action, without the written approval and consent of the attorney general and the state auditor. [L. '09, p. 140, § 8.]

See notes to § 9952.

§ 9959. [8354.] Affidavit of Claim for Services, etc.

Each and every claim for services performed, supplies furnished or claims of any nature for which compensation is asked, shall be sworn to before an officer authorized to administer oaths; that all public officers are required to take such affidavits without charge: Provided, that this section shall not apply to officers or employees drawing annual or monthly salaries, nor to the salaries of legislators, legislative employees, nor to the fees of jurors and witnesses: And provided further, that pay-rolls for daily wages may be sworn to by the superintendent, foreman or person in charge of the work. [L. '09, p. 142, § 9; L. '09, Ex. Sess., p. 56, § 1.]

Cited in 67 Wash. 316.

§ 9960. [8355.] Expenses of Bureau Levied Among Counties.

The expense of maintaining and operating the bureau herein provided for shall be paid out of the state general fund in the same

manner as other state employees. [L. '11, p. 108, § 1. Cf. L. '09, p. 142, § 10.]

See notes to § 9952.

Cited in 98 Wash. 256, 258.

§ 9961. [8356.] Expenses for Local Examination in Tax Districts.

The expense of auditing public accounts shall be borne by each taxing district for the auditing of all accounts under its jurisdiction and the state auditor is hereby authorized and empowered to certify the expense of such audit to the auditor of the county in which said taxing district is situated, who shall promptly issue his warrant on the county treasurer payable out of the current expense fund of the county, said fund, except as to auditing the financial affairs and making inspection and examination of the county, to be reimbursed by the county auditor out of the money due said taxing district at the next monthly settlement of the collection of taxes and to be transferred monthly by the county treasurer to the current expense fund; Provided, that when such examiners are used in auditing the accounts of state offices and institutions, they shall be paid by the state. [L. '11, p. 108, § 1. Cf. L. '09, p. 142, § 11.]

Cited in 65 Wash. 524, 525, 526.

This section does not violate Const., Art. XI, § 12, providing that the legisla-

ture shall not impose taxes upon counties and cities: State ex rel. Clausen v. Burr, 65 Wash. 524, 118 Pac. 639.

§ 9962. [8357.] County Auditor Deputy Supervisor.

Each county auditor shall be ex-officio deputy supervisor and in such capacity shall be under the direction of the chief inspector and the supervisor of public offices, but shall receive no additional salary or compensation by virtue of the same and shall perform no duties as such, except in connection with county business. [L. '09, p. 143, § 12.]

See notes to § 9952.

§ 9963. [8358.] Fiscal Year.

June 30 shall end the fiscal year of school districts and December 31 of all other taxing districts. [L. '09, p. 143, § 13.]

Official Bonds. See "Officers," § 9930.

Oil Inspection. See "Licenses," § 8332.

TITLE LXV.

OILS AND NATURAL GAS.

Control, sales, excise tax, etc., see "Licenses," § 8327.

§ 9964. [8358-1.] Corporations Operating Oil and Gas—Pipe-lines.

Two or more persons may organize a corporation having for its principal purpose the construction, maintenance and operation of pipe-lines and appurtenances for the conveyance and transportation of oils and natural gases. Such corporation shall be organized in the manner provided by law for the organization of ordinary trade or business corporations and shall have power to acquire, hold, use and transfer all such real and personal property as may be reasonably necessary for conducting its business, and to construct, maintain and operate pipe-lines and appurtenances for the conveyance and transportation of oils and natural gases. [L. '15, p. 361, § 1.]

§ 9965. [8358-2.] Common Carriers—Power of Eminent Domain.

Such corporations are hereby declared to be common carriers and subject to control and regulation by the public service commission of this state in the same manner and to the same extent as other public service corporations. The power of eminent domain is hereby conferred upon such corporations and they shall have the right to condemn and appropriate lands and property and interests therein for their use under the same procedure as is provided for the condemnation and appropriation of private property by railway companies but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation and appropriation by railway companies. Any property or interest therein acquired by any corporation under the provisions of this act by the exercise of the right of eminent domain shall be used exclusively for the purposes for which it was acquired. [L. '15, p. 361, § 2.]

Optometry. See "Physicians," § 10147.

Orphans. Protection of, see §§ 1700—1707.

Osteopaths. See "Physicians," § 10056.

Overcharges. See "Frauds," § 5841.

Oysters. See "Fish and Oysters," § 5756.

Oyster Lands. See "Lands of the State," §§ 8040, 8069.

PARDONS—PARTITION.

Pardons. See "Prisons and Reformatories," § 10247.

Park Districts. See "Highways," § 6720.

Parks. See "Municipal Corporations," § 9319.

Paroles. See "Prisons and Reformatories," § 10247.

Parties. Examination of, see §§ 1225—1230.

To actions, see §§ 179—203.

To criminal actions, see §§ 2007—2011.

Partition. See §§ 838—885.

TITLE LXVI.

PARTNERSHIPS AND BUSINESS NAMES.

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CHAPTER I.—LIMITED PARTNERSHIPS.

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CHAPTER II.—ASSUMED BUSINESS NAMES.

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| <p>9976. True name to be filed, when business under assumed name.</p> <p>9977. Certificate to be filed before commencing business.</p> <p>9978. Filing, when change in ownership.</p> | <p>9979. Not applicable to firms using true names, corporations, etc.</p> <p>9980. Compliance condition precedent to bringing suit.</p> |
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CHAPTER I.

LIMITED PARTNERSHIPS.

§ 9966. [8359.] Limited Partnership may be Formed.

Limited partnership for the transaction of mercantile, mechanical, or manufacturing business may be formed within this state, by two or more persons, upon the terms and subject to the conditions contained in this chapter. [L. '69, p. 380, § 1; 1 H. C., § 2917.]

Cited in 104 Wash. 264; 109 Wash. 502.

Partnership in General: See Remington's Digest, Partners, §§ 1—99, and cases cited. See, also:

THE RELATION—CREATION AND REQUISITES.

§§ 1, 2. Community of Interest—Sharing Profits as Rent: State ex rel. Ratliffe v. Superior Court, 108 Wash. 443, 184 Pac. 348.

§ 3. Division of Profits—Right to Accounting—Evidence: Nudd v. Rowe, 111 Wash. 322, 190 Pac. 902.

§ 6. Executory Agreements—Evidence—Sufficiency: Lucopoulos v. Sotriopoulos, 111 Wash. 400, 191 Pac. 149.

— Creation and Existence of Relation—Contract—Declarations of Party: Beebe v. Allison, 112 Wash. 145, 192 Pac. 17.

§ 8. Liabilities of Dormant Partners—Estoppel: Hanson v. Roesch, 104 Wash. 257, 176 Pac. 349.

EVIDENCE.

§ 14. Weight and Sufficiency—As Between Partners: Lucopoulos v. Sotriopoulos, 111 Wash. 400, 191 Pac. 149.

§ 18. Declarations of Party—Creation and Existence of Relation—Contract: Beebe v. Allison, 112 Wash. 145, 192 Pac. 17.

POWERS AND PROPERTY.

§ 20. Firm Name—Right to Use—Statutes: McGillivray v. Columbia Salmon Co., 104 Wash. 623, 177 Pac. 660.

— Recording: Gordon v. Marburger, 109 Wash. 496, 187 Pac. 354.

MUTUAL RIGHTS, DUTIES AND LIABILITIES OF PARTNERS.

§ 28. Acquiring Adverse Title—Estoppel—Retiring Partner: Carey v. Wilsey, 108 Wash. 679, 185 Pac. 600.

§ 30. Actions—Necessity of Accounting: Miller v. Kemper, 107 Wash. 274, 181 Pac. 859.

RIGHTS AND LIABILITIES AS TO THIRD PERSONS—REPRESENTATION OF FIRM BY PARTNER.

§ 36. Sales: Gile v. Tsutakawa, 109 Wash. 366, 187 Pac. 323.

§ 38. Execution of Note and Mortgage: Gordon v. Marburger, 109 Wash. 496, 187 Pac. 354.

§ 41. Estoppel—Liabilities of Dormant Partners: Hanson v. Roesch, 104 Wash. 257, 176 Pac. 349; Gordon v. Marburger, 109 Wash. 496, 187 Pac. 354.

ACTIONS BY OR AGAINST FIRMS OR PARTNERS.

§ 55. Capacity to Sue—Certificate of Assumed Name—Raising Issue—Statutes: Peterson v. Morris, 104 Wash. 507, 177 Pac. 320; McGillivray v. Columbia Salmon Co., 104 Wash. 623, 177 Pac. 660; Nishimoto v. Vernon, 107 Wash. 555, 182 Pac. 617.

— Filing Designation—Waiver: State ex rel. Stephens v. Superior Court, 111 Wash. 205, 190 Pac. 234.

RETIREMENT AND ADMISSION OF PARTNERS.

§ 67. Retiring Partner—Acquiring Adverse Title—Estoppel: Carey v. Wilsey, 108 Wash. 679, 185 Pac. 600.

DISSOLUTION, SETTLEMENT AND ACCOUNTING.

§§ 87—89. Right to — Defenses—Want of Assets: Baker v. Tennent, 108 Wash. 663, 185 Pac. 576.

§ 92. Receivers—Grounds for Appointment: Duley v. Duley, 112 Wash. 183, 191 Pac. 828.

§ 97. Relation—Division of Profits—Right to Accounting—Evidence: Nudd v. Rowe, 111 Wash. 322, 190 Pac. 902.

Where articles of limited partnership were not drawn under this act, nor a certificate of an assumed business name filed for the protection of the public, as required by section 9976, *infra*, a dormant or silent partner constitutes the visible partners agents of the partnership, and a creditor may offset his debt against the partnership: Hanson v. Roesch, 104 Wash. 257, 176 Pac. 349.

A nontrading partnership for the growing of potatoes is not within this section, relating to limited partnerships for the transaction of mercantile, mechanical or manufacturing business: Gordon v. Marburger, 109 Wash. 496, 187 Pac. 354.

§ 9967. [8360.] Of Whom Composed, and Liability of Members.

A limited partnership may consist of two or more persons, who are known and called general partners, and are jointly and severally liable as general partners now are by law, and of two or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any debts of the partnership, except as in this chapter specially provided. [L. '69, p. 380, § 2; 1 H. C., § 2918.]

§ 9968. [8361.] Certificate to be Made, Acknowledged and Filed.

The persons forming such partnership shall make and severally subscribe a certificate, in duplicate, and file one of such certificates with the county auditor of the county in which the principal place of business of the partnership is to be. Before being filed, the execution of such certificate shall be acknowledged by each partner subscribing it, before some officer authorized to take acknowledgments of deeds, and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate. [L. '69, p. 380, § 3; 1 H. C., § 2919.]

Construction of statutory requirement as to posting names of limited partnership. Ann. Cas. 1913B, 917.

§ 9969. [8362.] False Statement—Publication of Copy.

Such partnership cannot commence before the filing of the certificate of partnership, and if a false statement is made in such certificate, all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall, for four consecutive weeks immediately after the filing of the certificate of partnership, publish a copy of the same in some weekly newspaper published in the county where the principal place of business of the partnership is, or if no such paper be published therein, then in some newspaper in general circulation therein, and until such publication is made and completed, the partnership is to be deemed general. [L. '69, p. 380, § 4; 1 H. C., § 2920.]

§ 9970. [8363.] Renewal of Limited Partnership.

A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof, in the manner provided in this chapter for the formation of such partnership originally, and every such partnership, not renewed or continued as herein provided, from and after the expiration thereof according to the original certificate, shall be a general partnership. [L. '69, p. 381, § 5; 1 H. C., § 2921.]

§ 9971. [8364.] Name of Firm—When Special Liable as General Partner.

The business of the partnership may be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term. If the name of any special partner is used in such firm with his consent or privately, he shall be deemed and treated as a general partner, or if he personally makes any contract, respecting the concerns of the partnership, with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted and was recognized as a special partner only. [L. '69, p. 381, § 6; 1 H. C., § 2922.]

§ 9972. [8365.] Withdrawal of Stock and Profits—Effect of.

During the continuance of any partnership formed under this chapter no part of the capital stock thereof shall be withdrawn, nor any division of interests or profits be made, so as to reduce such capital stock below the sum stated in the certificate of partnership before mentioned; and if at any time during the continuance or at the termination of such partnership, the property or assets thereof are not sufficient to satisfy the partnership debts, then the special partners shall be severally liable for all sums or amounts by them in any way received or withdrawn from such capital stock, with interest thereon from the time they were so received or withdrawn respectively. [L. '69, p. 381, § 7; 1 H. C., § 2923.]

§ 9973. [8366.] Suits by and Against Limited Partnership—Parties.

All actions, suits, or proceedings respecting the business of such partnership shall be prosecuted by and against the general partners only,

except in those cases where special partners or partnerships are to be deemed general partners or partnerships, in which case all the partners deemed general partners may join therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock, as provided in the last preceding section. [L. '69, p. 381, § 8; 1 H. C., § 2924.]

Cited in 63 Wash. 145.

Exhaustion of remedy at law as condition precedent to creditors' bill against special partnership. 23 L. R. A. (N. S.) 111.

Admissibility of partnership books of account against special partner. 52 L. R. A. 841.

§ 9974. [8367.] Dissolution, How may be Accomplished.

No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners, is filed with the original certificate of partnership, or the certificate, if any, renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for the publication of the certificate of partnership. [L. '69, p. 382, § 9; 1 H. C., § 2925.]

§ 9975. [8368.] Liabilities and Rights of Members of Firm.

In all cases not otherwise provided for in this chapter, all the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners. [L. '69, p. 382, § 10; 1 H. C., § 2926.]

See supra, § 1458 et seq., and notes, administration of partnership property.

CHAPTER II.

ASSUMED BUSINESS NAMES.

§ 9976. [8369.] True Name to be Filed, When Business Under Assumed Name.

No person or persons shall hereafter carry on, conduct or transact business in this state under any assumed name or under any designation, name or style, corporate or otherwise, other than the true and real name or names of the person or persons conducting such business or having an interest therein, unless such person, or all of such persons, conducting said business, or having an interest therein, shall file a certificate in the office of the county clerk of the county or counties in which said business is to be conducted, which certificate shall set forth the designation, name or style under which said business is to be conducted, and the true and real name or names of the party or parties conducting, or intending to conduct, the same, or having an interest therein, together with the postoffice address or addresses of said person or persons. Such certificate shall be executed and acknowledged by the party or parties conducting, or intending to conduct, said business, or having an interest therein, before an officer authorized to take acknowledgment of deeds. [L. '07, p. 288, § 1.]

Cited in 52 Wash. 510; 53 Wash. 76; 59 Wash. 57; 61 Wash. 452; 63 Wash. 145; 66 Wash. 461; 70 Wash. 483, 484; 80 Wash. 450; 85 Wash. 237; 98 Wash. 136; 104 Wash. 264, 508, 625; 107 Wash. 559.

The contracts of a partnership are not invalidated by reason of its failure to file with the county clerk a certificate showing the names of the partners, as required by this section; since the statute does not so provide and contains nothing from which such effect can be inferred, under the strict construction requiring a law in derogation of a common-law right to clearly show the intent: *Sutton & Co. v. Coast Trading Co.*, 49 Wash. 694, 96 Pac. 428.

The filing of a certificate of an assumed name is merely a condition precedent to action, and is not necessary to give legal existence to a partnership: *Powelson v. Seattle*, 87 Wash. 617, 152 Pac. 329.

A certificate as to the assumed name under which plaintiff was doing business complies with this section, where it recites that the plaintiff is engaged in and conducting a general retailing business at Metaline Falls, Pend Oreille county, state of Washington. And it need not give the name of her husband, when she was the owner of the business and her husband was merely a manager: *Remly v. Swanson*, 80 Wash. 449, 141 Pac. 899.

The bringing of a suit does not constitute doing business in this state, within this section: *Singmaster v. Hall*, 98 Wash. 134, 167 Pac. 136.

What is fictitious partnership name. 10 Ann. Cas. 812; L. R. A. 1916D, 355.

Right of individual to transact business and make contracts under an assumed name. L. R. A. 1915D, 982.

§ 9977. [8370.] Certificate to be Filed Before Commencing Business.

Any person or persons now conducting any business under such assumed name, or under any designation, name or style other than the true and real name or names of all of the parties having an interest therein, shall file a certificate as provided for in section 9976 within thirty days after this act shall take effect; and persons hereafter conducting, or intending to conduct, any business, as set forth in section 9976, shall, before commencing business, file such certificate in the manner hereinbefore prescribed. [L. '07 p. 289, § 2.]

Cited in 85 Wash. 237.

§ 9978. [8371.] Filing, When Change in Ownership.

Whenever any business is being conducted under any assumed name, or under any designation, name or style other [than] the true and real name or names of all the parties having an interest therein, and there shall be any change in the ownership or interest therein, then the party or parties who are to conduct such business, or have an interest therein after such change in interest, shall file a certificate as provided in section 9976, before conducting or transacting any business whatsoever. [L. '07, p. 289, § 3.]

Cited in 85 Wash. 237.

§ 9979. [8372.] Not Applicable to Firms Using True Names, Corporations, etc.

This chapter shall in no way affect or apply to any corporation duly organized under the laws of this state, or to any corporation organized under the laws of another state and lawfully doing business in this state; nor shall this chapter be deemed or construed to prevent the lawful use of a partnership designation, name or style: Provided, that such partnership designation, name or style shall include the true and real name or names of all of the parties conducting such business or having an

interest therein; nor shall this chapter affect or apply to any limited partnership now legally organized or to be organized within this state. [L. '07, p. 289, § 4.]

Cited in 66 Wash. 461; 70 Wash. 483, 484; 85 Wash. 237; 104 Wash. 626.

Under this section, plaintiffs doing business under the name of "Hale-Tindall Co.," which contains the names of all the partners, are exempt from the requirements of the statute: *Hale v. City Cab, Carriage & Transfer Co.*, 66 Wash. 459, 119 Pac. 837.

A person conducting a business in which he alone is interested, in the name of a company containing his full name, is exempt from filing with the county clerk

the designation of the firm with the true and real names of all persons conducting the business or having an interest therein: *Merrill v. Caro Investment Co.*, 70 Wash. 482, 127 Pac. 122.

The filing of a certificate of an assumed name is not required of one doing business in the name of a company containing his full name as proprietor, he being the only person interested therein, in view of this section: *McGillivray v. Columbia Salmon Co.*, 104 Wash. 623, 177 Pac. 660.

§ 9980. [8373.] Compliance Condition Precedent to Bringing Suit.

No person or persons carrying on, conducting or transacting business as aforesaid, or having an interest therein, shall hereafter be entitled to maintain any suit in any of the courts of this state without alleging and proving that such person or persons have filed a certificate as provided for in section 9976, and failure to file such certificate shall be prima facie evidence of fraud in securing credit. [L. '07, p. 290, § 5.]

Cited in 61 Wash. 452; 70 Wash. 483; 85 Wash. 237.

Capacity to Sue and be Sued in General—Failure to Plead: See *Remington's Digest, Partners*, § 55; *Sutton & Co. v. Coast Trading Co.*, 49 Wash. 694, 96 Pac. 428; *Malfa v. Crisp*, 52 Wash. 509, 100 Pac. 1012; *Church v. Wilkeson-Tripp Co.*, 58 Wash. 262, 108 Pac. 596, 109 Pac. 113, 137 Am. St. Rep. 1059; *Bowman v. Harrison*, 59 Wash. 56, 109 Pac. 192; *Pierson*

v. Northern Pac. R. Co., 61 Wash. 450, 112 Pac. 509; *Hale v. City Cab, Carriage & Transfer Co.*, 66 Wash. 459, 119 Pac. 837; *Crosier v. Cudihee*, 85 Wash. 237, 147 Pac. 1146; *Singmaster v. Hall*, 98 Wash. 134, 167 Pac. 136.

See, also, *Peterson v. Morris*, 104 Wash. 507, 177 Pac. 320; *McGillivray v. Columbia Salmon Co.*, 104 Wash. 623, 177 Pac. 660; *Nishimoto v. Vernon*, 107 Wash. 555, 182 Pac. 617.

Patrons of Husbandry. See "Corporations," § 3901.

TITLE LXVII.

PAUPERS, PENSIONERS AND PUBLIC AID.

Provisions for soldiers and sailors: See *infra*, §§ 10737—10743.

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CHAPTER I.—PAUPERS.

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CHAPTER I.

PAUPERS.

§ 9981. [8374.] Superintendence of Poor.

The board of county commissioners of the several counties of this state are hereby vested with entire and exclusive superintendence of the poor in their respective counties: Provided, that this section shall not be so construed as to include any incorporated city or town having by its charter any of the powers enumerated in said section. [Cf. L. '54, p. 422, § 19; L. '54, p. 395, § 1; Cd. '81, §§ 2680, 2696; 1 H. C., § 3087.]

Compare § 283, 1 Hill's Code, omitted as obsolete.

See *supra*, § 2305, attorney for pauper criminals.

See *supra*, § 6950, insane pauper.

See *infra*, §§ 10026, 10027, dead bodies of paupers.

Cited in 9 Wash. 104; 90 Wash. 244.

Local Authorities Liable: See Remington's Digest, Paupers, § 1; Collins v. King County, 1 W. T. 416; Guerin v. Clarke County, 90 Wash. 242, 155 Pac. 1035; Singleton v. Hamilton, 90 Wash. 242, 155 Pac. 1057.

Fixing Liability and Recovery—Adjudication of Poverty: See Remington's Digest, Paupers, §§ 2—4; King County v. Collins, 1 W. T. 469.

— **Notice Between Local Authorities:** Collins v. King County, 1 W. T. 416.

Recovery for Expenditures — Against Local Authorities Liable: Collins v. King County, 1 W. T. 416.

Who is pauper or poor person within poor laws. 20 **Ann. Cas.** 756; **Ann. Cas.** 1916C, 389.

§ 9982. [8375.] Relatives to Support Poor, When.

Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister, or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace or any court having jurisdiction: Provided, that when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child. [L. '54, p. 395, § 2; Cd. '81, § 2697; 1 H. C., § 3088.]

Cited in 19 Wash. 139.

Contribution between relatives supporting paupers. **Ann. Cas.** 1915D, 242.

§ 9983. [8376.] Order in Which Liability Attaches.

The children shall be first called on to support their parents, if there be children of sufficient ability; and if there be none, the parents of the poor persons shall be next called on, and if there be no parents or children of sufficient ability; the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grandchildren of such poor person shall be called on, and then the grandparents; but married females whilst their husbands live shall not be liable to a suit. [L. 54, p. 396, § 3; Cd. '81, § 2698; 1 H. C., § 3089.]

§ 9984. [8377.] County to Support Poor, When—Contract.

When any poor person shall not have relatives in any county in this state, as are named in the preceding sections, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same. [L. '54, p. 396, § 4; Cd. '81, § 2699; 1 H. C., § 3090.]

See notes to § 9981.

Cited in 90 Wash. 242, 244.

What is "necessary expense" incurred by superintendent of poor. **Ann. Cas.** 1918D, 928.

Liability for support of unsettled or transient pauper. **Ann. Cas.** 1913C, 82.

§ 9985. [8378.] Minor to be Apprenticed, When.

When any minor shall become or be likely to become chargeable to the county, either because of being an orphan, or because the parents or

other relations, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices. [L. '54, p. 396, § 5; Cd. '81, § 2700; 1 H. C., § 3091.]

What act is referred to as "the act concerning apprentices" is not apparent.

See *supra*, § 1696 et seq., adoption of children.

§ 9986. [8379.] Aid to Nonresidents, etc., When.

When any nonresident, or any other person not coming within the definition of a pauper, shall fall sick in any county in this state, not having money or property to pay his board, nursing, or medical aid, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give or order to be given to such person a decent burial; and the said commissioners shall make [such] allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury. [L. '54, p. 396, § 6; Cd. '81, § 2701; 1 H. C., § 3092.]

§ 9987. [8380.] Length of Residence Necessary.

When application is made by any pauper to the board of county commissioners of any county in the state, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county for six months immediately preceding the day upon which such application was made. [L. '54, p. 396, § 7; L. '79, p. 139, § 1; Cd. '81, § 2702; 1 H. C., § 3093.]

See *infra*, § 9989, expulsion of pauper.

Cited in 5 Wash. 730; 7 Wash. 352.

§ 9988. [8381.] Power of Commissioners During Vacation of Board.

Each of the commissioners shall be an ex-officio agent, authorized to contract, during vacation of the board, for the support of any poor person found in his county during such vacation. [L. '79, p. 139, § 2; Cd. '81, § 2703; 1 H. C., § 3094.]

Compare last part of § 2680, Cd. '81 (283, 1 Hill's Code), omitted as obsolete.

§ 9989. [8382.] Proceedings to Expel Pauper.

When application is made by any pauper to the board of county commissioners as aforesaid, if it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section [9987] he shall be entitled to all the relief provided by this title; but if, on the contrary, it shall appear to the satisfaction of said board that such pauper has not been a resident of said county agreeably to the provisions of section 9987, they shall proceed to remove from their county, at the expense of said county, such pauper to the county where such pauper may have his

residence, or may, if they think best, issue a notice directed to some constable of the county, which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county; and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the said clerk of the board of county commissioners issuing the same, noting the time and manner of service. [L. '54, p. 397, § 8; Cd. '81, § 2704; 1 H. C., § 3095.]

§ 9990. [8383.] Denial of Relief, When.

After service of such notice as aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners shall deem it absolutely necessary. [L. '54, p. 397, § 9; Cd. '81, § 2705; 1 H. C., § 3096.]

§ 9991. [8384.] Workhouse for Paupers.

The board of county commissioners of any county in this state may, if they think proper, cause to be built or provided in their respective counties workhouses for the accommodation and employment of such paupers as may from time to time become a county charge; and said workhouses and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just. If any person shall bring and leave any pauper in any county in this state wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, in a civil action before any court having jurisdiction of the same. [L. '54, p. 397, §§ 10, 11; Cd. '81, § 2706; 1 H. C., § 1297.]

Cited in 90 Wash. 244, 247.

§ 9992. [8385.] Importing Pauper.

If any person knowingly bring within this state any pauper or poor person with the intent of making him a charge on any county or counties therein, he shall be punished by fine not exceeding five hundred dollars, and stand charged with his support. [Cd. '81, § 932; 2 H. P. C., § 162.]

CHAPTER II.

MOTHERS' PENSIONS.

§ 9993. [8385-1.*] Counties to Help Destitute Mothers.

In every county it shall be the duty of the county commissioners to provide out of the moneys of the county treasury an amount sufficient to meet the purposes of this law for the support of mothers who, by reason of destitution, insufficient property or income, or lack of earning capacity, are unable to support their children under the age of fifteen years. [L. '19, p. 254, § 1; L. '15, p. 364, § 1. Cf. L. '13, p. 644, § 1.]

Cited in 93 Wash. 59.

This section is not unconstitutional as class legislation, in that it repeals the act of 1913 without making provision for

abandoned wives: Snyder's Petition, In re, 93 Wash. 59, 160 Pac. 12.

Mothers' pension acts. 3 A. L. R. 1233.

§ 9994. [8385-2.] Allowance.

The allowance to such mother shall not exceed fifteen (15) dollars per month when she has but one child under the age of fifteen years, and if she has more than one child under the age of fifteen years, it shall not exceed the sum of fifteen dollars per month for the first child, and five dollars per month for each of the other children under the age of fifteen years. [L. '15, p. 365, § 2. Cf. L. '13, p. 644, § 2.]

§ 9995. [8385-3.] Courts to Make Allowance.

Such allowance shall be made by the juvenile court in the counties where such court is held and elsewhere by the superior court, and only upon the following conditions: (1) The child or children for whose benefit the allowance is made must be living with the mother of such child or children; (2) When by means of such allowance the mother will be able to maintain a home for her child or children; (3) The mother must in the judgment of the court, be a proper person, morally, physically and mentally, for the bringing up of her children; (4) No person shall receive the benefit of this act who shall not have been a resident of the state for three (3) years and of the county in which such application is made for at least one year next before the making of such application for such allowance. [L. '15, p. 365, § 3. Cf. L. '13, p. 645, § 3.]

§ 9996. [8385-4.] Benefit Ceases, When.

Whenever any child shall reach the age of fifteen years any allowance made to the mother of such child for the benefit of such child shall cease. The court may in its discretion at any time before such child reaches the age of fifteen years, discontinue or modify the allowance to any mother and for any child. [L. '15, p. 365, § 4. Cf. L. '13, p. 645, § 4.]

§ 9997. [8385-5.] Penalties.

Any person procuring fraudulently any allowance for a person, not entitled thereto, shall be deemed guilty of a gross misdemeanor. [L. '15, p. 365, § 5. Cf. L. '13, p. 645, § 5.]

§ 9998. [8385-6.] Prosecuting Attorney to Bring Proceedings—Payment of Warrants.

In each case where an allowance is made to any woman under the provisions of this act, an order to that effect shall be entered upon the records of the court, making such allowance. Proceedings to obtain the benefit of this act shall be instituted and maintained in the same manner as proceedings are instituted and maintained in the juvenile court, and the prosecuting attorney shall render all necessary assistance to applicants under this act and shall appear in every such proceeding and through the probation officer, the charity commissioner or any person having knowledge of the facts, shall carefully investigate the merits of every application to the end that this act may be fairly administered and no person granted relief hereunder except those justly entitled thereto, and no officer of the court or county officer shall receive any

fees for any service rendered in carrying out the provisions of this act. A certified copy of said order shall be filed with the county auditor of the county in which such child's mother is resident, and thereupon and thereafter and so long as such order remains in force and unmodified it shall be the duty of the county auditor each month to draw his warrant on the current expense fund of the county in favor of the mother for the amount specified in such order, which warrant shall be by the auditor delivered to the mother upon her executing duplicate receipts therefor, one to be retained by the auditor and the other to be filed by the clerk with the other records in the proceedings relating to such child or children. It shall be the duty of the county treasurer to pay such warrant out of funds in the current expense fund of the county. [L. '15, p. 365, § 6. Cf. L. '13, p. 645, § 6.]

CHAPTER III.

AID TO ADULT BLIND.

§ 9999. Supervisor of Aid to Adult Blind.

The supervisor of industrial relations, with the approval of the director of labor and industries shall appoint an assistant to be known as the supervisor of industrial aid to the adult blind. [L. '21, p. 207, § 1.]

§ 10000. General Aid—Persons Entitled.

The director of labor and industries shall have the power and it shall be his duty through and by means of the division of industrial relations, to promote the educational and industrial welfare of the adult blind residents of the state, in both home and factory, to secure suitable employment, furnish materials for adult blind workers and market the products of their labor. [L. '21, p. 208, § 2.]

§ 10001. County Aid—Persons Entitled.

It shall be the duty of the board of county commissioners of the several counties to, from time to time, provide funds for the aid of the industrial and general education of the adult blind of the county who are unable to support themselves, but no person shall be entitled to such aid unless he is a blind person over the age of eighteen years and has been an actual bona fide resident of the state of Washington for more than three years and of the county for at least one year immediately preceding his application for such aid, or was blinded within the state while a bona fide resident thereof and is unable to earn a livelihood from the consequence of his blindness and is a person of such physical and mental capacity as is likely to be benefited by the aid herein provided for. [L. '21, p. 208, § 3.]

§ 10002. Application for Aid.

Any adult blind person entitled to aid under the provisions of this act and desiring to obtain the same, shall make application therefor in writing upon a blank to be furnished by the supervisor of industrial aid to the adult blind, verified under oath by the applicant and supported by the recommendation of the director of labor and industries, setting

forth the facts in the particular case; the board of county commissioners shall hear the application and may require the furnishing of additional evidence in support thereof. In case the application is granted, the board shall enter an order specifying the aid to be granted, not to exceed the sum of thirty-five dollars per month, nor to exceed the sum of three hundred dollars in all: Provided, that when it shall appear that the earnings of the blind person are exceeding the sum of fifteen dollars per month, the county aid shall be reduced by the amount of the excess of such earnings over the sum of fifteen dollars. It shall be the duty of every person granted county aid under the provisions of this act to, on or before the tenth day of each calendar month, file with the county auditor upon a blank to be furnished for that purpose, a statement of his earnings for the preceding calendar month, subscribed and verified under oath by the person entitled to the aid. A certified copy of the order granting the aid shall be filed with the county auditor of the county in which the blind person is a resident and thereupon and thereafter, so long as such order remains in force, it shall be the duty of the county auditor, on or before the tenth day of each calendar month, to draw his warrant on the current expense fund of the county in favor of such blind person, in the amount specified in such order, less the amount of the earnings of the blind person in excess of fifteen dollars for the preceding calendar month, and to deliver such warrant to the person granted the aid. [L. '21, p. 208, § 4.]

§ 10003. Removal to Another County No Bar to Aid.

The removal of any blind person receiving aid under the provisions of this act to any part of the state other than the county of his legal residence, for the purposes of education or employment, shall not deprive such blind person of the aid provided for in this act. [L. '21, p. 209, § 5.]

§ 10004. Rescission of Order Granting Aid.

Whenever it shall be made to appear to the board of county commissioners that any blind person receiving aid under the provisions of this act is through willful neglect, indolence or incapacity, not profiting by such aid, the board shall be authorized to rescind the order granting the aid. [L. '21, p. 209, § 6.]

§ 10005. Adult Blind Revolving Fund.

There is hereby created in the state treasury a special fund, to be known as the adult blind revolving fund, from which shall be paid all sums required for the purchase of materials for blind workers and into which shall be paid all sums received from the sale of the products of blind workers, equal to the cost of the materials furnished therefor. The director of labor and industries shall have the power to authorize the supervisor of industrial aid to the adult blind, to purchase and distribute materials to blind workers and to market the products manufactured therefrom and to pay to the blind workers all sums received in excess of the cost of the materials used in such products, and to pay the cost of such materials into the state treasury, to the credit of the adult blind revolving fund. [L. '21, p. 210, § 7.]

§ 10006. Appropriations.

There is hereby appropriated out of the general fund in the state treasury into the adult blind revolving fund, the sum of seventy-five hundred dollars; for the purpose of purchasing materials for the use of the adult blind, there is hereby appropriated out of the adult blind revolving fund the sum of twenty thousand dollars; for the purpose of salaries and wages, supplies, materials and service for the department of labor and industries in carrying out the provisions of this act, there is hereby appropriated out of the general fund the sum of five thousand dollars. [L. '21, p. 210, § 8.]

§ 10007. Fraudulently Procuring Aid.

Any person fraudulently procuring aid from any county as herein provided for any person not entitled thereto shall be guilty of a gross misdemeanor. [L. '21, p. 210, § 9.]

Peddlers. See "Licenses," § 8341; "Physicians," § 10141.

Free licenses to veterans, see "Soldiers and Sailors," § 10753.

Penalties. See § 2253.

Penitentiary. See "Prisons and Reformatories," § 10210.

Pensions. For firemen, see "Municipal Corporations," § 9559.

For Indian war veterans, see "Soldiers and Sailors," § 10749.

For police, see "Municipal Corporations," § 9579.

Pharmacists. See "Physicians," § 10126.

PHYSICIANS, SURGEONS AND TREATMENT OF THE SICK.

TITLE LXVIII.

PHYSICIANS, SURGEONS AND TREATMENT OF THE SICK.

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CHAPTER I.

PHYSICIANS.

§ 10008. [8391.*] Certificates to Practice—Qualifications.

Only one form of certificate shall be issued by the said board. [State medical examiners] Such certificate shall be under the seal of the board and signed by the president and secretary, and shall authorize the holder thereof to practice medicine and surgery within this state. Upon compliance with the requirements of this act by an applicant for a license to practice medicine and surgery in this state, the board shall issue such certificate, authorizing the holder thereof to use drugs or what are known as medicinal preparations in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods

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in the treatment of diseases, injuries, deformities, or other physical or mental conditions.

In order to procure a certificate to practice medicine and surgery, the applicant for such certificate must file with said board at least thirty days prior to a regular meeting thereof, satisfactory testimonials of his moral character, and a diploma issued by some legally chartered medical school, the requirements of which shall have been at the time of granting such diploma in no particular less than those prescribed by the Association of American Medical Colleges for that year, or satisfactory evidence of having possessed such diploma, and he must file with such diploma an application sworn to before some person authorized to administer oaths, and attested by the hand and seal of such officer, if he have a seal, stating that he is the person named in said diploma, that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation. From and after July 1, 1919, said applicant must furnish evidence that he has served for not less than one year as interne in a thoroughly equipped hospital which shall have had at least twenty-five beds for each interne devoted to the treatment of medical, surgical, gynecological and special diseases, and he also must have had a service of six weeks, or the equivalent thereof in the maternity department of the same or some other hospital, during which time he shall have attended or participated in the attendance upon not less than six confinements. He shall furnish evidence that he has had some experience in, and a practical working knowledge of pathology, and the administration of anaesthetics: Provided, that when an applicant who has graduated before July 1, 1919, has not completed one year as interne as above provided, he must furnish evidence that he has been engaged in the active practice of medicine and surgery for a period of at least two years prior to that date. The said application shall be made upon a blank furnished by said board, and it shall contain such information concerning said medical instruction and the preliminary education of the applicant as said board may by rule provide. Applicants who have failed to meet the requirements must be rejected. [L. '19, p. 373, § 3; L. '09, p. 679, § 6.]

Former laws cited in 4 Wash. 430; 36 Wash. 313; 40 Wash. 456—458; 55 Wash. 404, 405; 59 Wash. 316, 317, 323, 324; 61 Wash. 150; 84 Wash. 283; 89 Wash. 671; 93 Wash. 491.

Cited in 89 Wash. 671; 93 Wash. 491.

Compare on the subject of this chapter Cd. '81, §§ 2284—2294; L. '86, p. 169, amd. § 2289, Cd. '81; L. '88, p. 159, amd. § 2286, Cd. '81; L. '90, p. 114; 1 H. C., § 2844; 1 Bal. Code, § 3012; L. '01, p. 47, § 1; L. '05, p. 70, § 1.

See *infra*, § 10854, duties devolve upon director of licenses.

See *infra*, § 10893, board of medical examiners abolished.

Cited in 59 Wash. 317; 93 Wash. 491.

Power to Regulate Practice: See Remington's Digest, Phys., § 1; State v. Carey, 4 Wash. 424, 30 Pac. 729; State ex rel. Smith v. Dental Examiners, 31 Wash. 492, 72 Pac. 110; Thompson, In re, 36 Wash. 377, 78 Pac. 899, 2 Ann. Cas. 149; State v. Sexton, 37 Wash. 110, 79 Pac. 634; State v. Brown, 37 Wash. 97, 79 Pac. 635, 107 Am. St. Rep. 798, 68 L. R. A. 889; State v. Pollman, 51 Wash. 110,

98 Pac. 88; State v. Dodson, 54 Wash. 31, 102 Pac. 872; State Board of Medical Examiners v. Harrison, 92 Wash. 577, 159 Pac. 769.

Rem. & Bal. Code, section 8386 et seq., as amended, being a complete act regulating the practice of medicine and the issuance of licenses therefor, and making certain violations of the act felonies or misdemeanors, and authorizing the state medical board to prosecute all persons

guilty of violation of the act, but failing to expressly authorize the board to employ private counsel, and failing to provide any special punishments or procedure for prosecuting offenders, stands on the plane of the general criminal statutes as respects violations of the act and punishments therefor, and such duties therefore fall upon the prosecuting attorneys, and the state medical board has no authority to employ private counsel: *State ex rel. State Board of Medical Examiners v. Clausen*, 84 Wash. 279, 146 Pac. 630.

This section, providing for a diploma the requirements of which shall have been "in no particular less than those prescribed by the Association of American Medical Colleges for that year," is not unconstitutional as granting legislative functions to such association: *State v. Bonham*, 93 Wash. 489, 161 Pac. 377, L. R. A. 1917D, 996.

Such provision could not be objected to by one applying for a license to practice osteopathy, as he was not affected by it, and it will not render the whole act unconstitutional: *State v. Bonham*, 93 Wash. 489, 161 Pac. 377, L. R. A. 1917D, 996.

Malpractice and Actions Therefor: See *Remington's Digest, Phys.*, §§ 9—13, and cases cited.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method. 16 A. L. R. 709.

Vested rights of previous practitioners as impaired by statute requiring them to take out licenses: 5 Ann. Cas. 1005; 19 Ann. Cas. 833; Ann. Cas. 1914B, 399.

§ 10009. [8392.*] Subjects of Examination—Questions and Papers.

In addition to the requirements above set forth, such applicants for a certificate must be personally examined by said board as to their qualifications. The examination shall be conducted in the English language, shall be practical in character and designed to discover the applicant's fitness to practice medicine and surgery, and shall be, in whole or in part, in writing on the following fundamental subjects, to wit: Anatomy, histology, gynecology, pathology, bacteriology, chemistry, toxicology, physiology, obstetrics, general diagnosis, hygiene, practice of medicine and surgery and any other branches thereof that the board shall deem advisable. Examinations in each subject shall consist of not less than ten questions, answers to which shall be marked upon a scale of zero to ten. All applicants must obtain not less than sixty per cent in any one subject: Provided, that applicants who can show at least ten years of reputable practice shall be granted a credit of five per cent upon the general average, and five per cent additional for each subsequent ten years of such practice. The examination papers shall form a part of the records of the board and shall be kept on file by the secretary for a period of one year after each examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application. [L. '19, p. 375, § 4; L. '09, p. 680, § 6.]

Compare Cd. '81, §§ 2284—2294; L. '88, p. 159.

Cited in 93 Wash. 492.

Constitutional and Statutory Provisions: See *Remington's Digest, Phys.*, § 2, and cases cited.

Authority to Admit to Practice, and Qualifications: See *Remington's Digest, Phys.*, §§ 3, 4; *Thompson, In re*, 36 Wash. 377, 78 Pac. 899, 2 Ann. Cas. 149; *State ex rel. Brown v. Board of Dental Examiners*, 38 Wash. 325, 80 Pac. 544.

Registration, Certificate or License: See *Remington's Digest, Phys.*, § 4-1; *Littlefield, In re*, 61 Wash. 150, 112 Pac. 234; *State ex rel. Brunn v. State Board of Medical Examiners*, 61 Wash. 623, 112 Pac. 746; *State ex rel. Stanley v. Witter*, 68 Wash. 356, 123 Pac. 471; *State Board of Medical Examiners v. Harrison*, 92 Wash. 577, 159 Pac. 769; *State Board of Medical Examiners v. Macy*, 92 Wash. 614, 159 Pac. 801.

§ 10010. [8393.] Examination Fee.

Each applicant, on making application, shall pay the secretary of the board a fee of twenty-five (\$25) dollars, which shall be turned over to the treasurer of the board, who shall retain fifteen (\$15) dollars for the fee in his possession until the board shall have passed upon the credentials of the applicant, and in case they are insufficient the sum of fifteen (\$15) dollars shall be returned upon application.

All money received or collected by said board or any member or officer thereof, during any month, shall be turned over, before the tenth day of the succeeding month to the state treasurer together with a verified statement showing the sources from which such money was derived. The treasurer of said board shall give security bond to be approved by and deposited with the auditor of the state, in the sum of one thousand dollars (\$1,000). The cost of said bond shall be paid by the state.

Each member of the board of medical examiners shall receive a compensation of five dollars per day for each day in which he is actually and necessarily engaged in attendance upon meetings of the board, in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings. All such compensation and expenses, and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers. The secretary and treasurer of said board shall receive a compensation to be determined by said board not to exceed fifty dollars per annum. [L. '13, p. 256, § 1. Cf. L. '09, p. 681, § 7.]

See notes to § 10008.

Cited in 84 Wash. 284.

§ 10011. [8394.] Records of Board.

Said board shall keep an official record of all its proceedings, a part of which record shall consist of a register of all applicants for certificates under this act, with the result of each application. Said record shall be evidence of all the proceedings of said board which are set forth therein. [L. '09, p. 681, § 8.]

See notes to § 10008.

§ 10012. [8395.*] Certificates Recorded With County Clerk.

Every person holding a certificate authorizing him to practice medicine and surgery in this state, must have it recorded in the office of the county clerk of the county in which the holder of said certificate is practicing his profession, and the fact of such recording shall be indorsed on the certificate by the county clerk recording the same. Every such person, on each change of his residence, must have the certificate recorded in the county to which he shall have changed his residence. The absence of such record shall be prima facie evidence of the want of possession of such certificate. And any person holding a certificate to practice medicine and surgery in this state who shall attempt to practice medicine or surgery in this state, without first having filed his

certificate with the county clerk as herein provided shall be guilty of a misdemeanor. [L. '19, p. 376, § 5; L. '09, p. 681, § 9.]

See supra, § 2402, prescribing while intoxicated.

See supra, § 2509, prescribing narcotic drugs.

See supra, § 2510, fraudulent prescriptions.

See supra, § 2544, practicing without a license; also, *infra*, § 10018.

See supra, § 6012, failure to report births and deaths.

See supra, § 6038, false birth certificate.

See supra, §§ 6087, 6098, 6112, failure to report contagious disease.

See supra, § 7313, prescribing or administering alcohol unlawfully.

See supra, § 8472, false certificate of physical disability.

Cited in 89 Wash. 672.

An information is not duplicitous in that it charges the offense of practicing without having the certificate recorded under this section, and also the offense of practicing without having a certificate under section 10018, where it does not

state sufficient facts to charge a complete offense of practicing without recording the certificate in the county of his residence; since its allegations in that respect, being insufficient to sustain a conviction, may be rejected as surplusage: *State v. Sanford*, 89 Wash. 669, 154 Pac. 1114.

§ 10013. [8396.*] Clerk's Record of Certificates.

The county clerk shall keep in a book provided for the purpose, a complete list of the certificates recorded by him, with the date of the record; and said book shall be open to public inspection during his office hours. The county clerk shall forthwith give written notice to the secretary of the board, notifying him of the name of each licensee recorded after this act shall go into effect, together with the date of such recording. [L. '19, p. 376, § 6; L. '09, p. 682, § 10.]

§ 10014. [8397.*] Unprofessional Conduct—Refusal or Revocation of License—Procedure.

Said board must refuse a certificate to any applicant guilty of unprofessional conduct; but before such refusal the applicant must be cited by citation, signed by the secretary of the board, and sealed with its seal. No such citation shall be issued except upon a sworn complaint filed with the secretary of the board, charging the applicant with having been guilty of unprofessional conduct, and setting forth the particular act constituting such unprofessional conduct. On filing of such complaint the secretary must forthwith issue a citation and make the same returnable at a regular or special meeting of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant of the time and place when and where the matter of said unprofessional conduct shall be heard, the particular unprofessional conduct with which the applicant is charged, and that the applicant shall file his written answer, under oath, within twenty days next after service upon him of said citation, or default will be taken against him, and his application for certificate refused. The attendance of witnesses at such hearing shall be compelled by subpoenas issued by the secretary of the board under its seal; and said secretary shall in no case refuse to issue any such subpoena, upon a fee of twenty cents being paid him for each subpoena. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of summons and subpoenas generally and all provisions of the statutes of this state then in force relating to subpoenas are hereby

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made applicable to the subpoenas provided for herein. If any person refuses to obey a subpoena served upon him in accordance with the statutes of this state then in force providing for the manner of serving subpoenas, the fact of such refusal shall be certified by the secretary of said board, under the seal thereof, to the superior court of the county in which the service was had and the said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempt for disobedience of process of the court, and should said court find that the subpoena had been legally served and that the party so served has willfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct arising under this act, testimonies of witnesses may be taken, the same as in civil cases, and all the provisions of the statutes of this state then in force as to the taking of testimony are hereby made applicable to the taking of depositions under this section. If the applicant shall fail to file with the secretary of said board his answer, under oath, to the charges made against him, within twenty days after service on him of said citation or within such further time as the board may give him, and the charges on their face be deemed sufficient by the board, default shall be entered against him and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. No certificate shall be refused on the grounds of unprofessional conduct unless the applicant has been guilty of such conduct within two years next preceding his application. Whenever any holder of a certificate to practice medicine and surgery in this state is guilty of unprofessional conduct, as the same is defined in this act, and said unprofessional conduct has been brought to the attention of the board in the manner hereinafter pointed out, or whenever a certificate has been procured by fraud or misrepresentation, or issued by mistake, it shall be their duty to, and they must, revoke the same at once, and the holder of said certificate shall not be permitted to practice medicine and surgery in this state. But no such revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary in all cases of revocation shall enter on his register the fact of such revocation and shall certify the fact of such revocation under the seal of the board, to the county clerk of each county in which the certificate of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person, the following: "This certificate was revoked on the — day of —," giving the day, month and year of revocation in accordance with certification to him by the secretary. The record of such revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all the proceedings of said board in the matter of said revocation. From the time of the revocation of a certificate the

holder thereof shall be disqualified from practicing medicine or surgery in this state. [L. '19, p. 376, § 7; L. '09, p. 682, § 11.]

Former laws cited in 46 Wash. 83.

Cited in 92 Wash. 235, 579.

See notes to § 10008.

Ballinger's Code, section 3015, making a conviction conclusive evidence of unprofessional conduct, was but a rule of evidence to which the statute of limitations does not apply: State Medical Examining Board v. Stewart, 46 Wash. 79, 89 Pac. 475, 123 Am. St. Rep. 915, 13 Ann. Cas. 653, 11 L. R. A. (N. S.) 557.

An act providing that a conviction of an offense involving "moral turpitude," shall be conclusive evidence of unprofessional conduct is not unconstitutional and the board could not go back of the record of conviction: State Board of Medical Ex-

aminers v. Harrison, 92 Wash. 577, 159 Pac. 769.

The term "moral turpitude" in such act is not so vague and uncertain as to render the law unconstitutional: State Board of Medical Examiners v. Harrison, 92 Wash. 577, 159 Pac. 769.

Validity and effect of statute authorizing revocation of licenses of physicians or surgeons. 7 Ann. Cas. 752; 9 Ann. Cas. 127; Ann. Cas. 1912A, 634; Ann. Cas. 1915D, 1194; 5 A. L. R. 94.

Grounds for revoking physician's license. 8 L. R. A. (N. S.) 585; 17 L. R. A. (N. S.) 439; 30 L. R. A. (N. S.) 783; L. R. A. 1915D, 1218.

§ 10015. [8397½.] Acts Constituting Unprofessional Conduct.

The words "unprofessional conduct," as used in this chapter, are hereby declared to mean:

First. The procuring, or aiding or abetting in procuring a criminal abortion.

Second. The willfully betraying of a professional secret.

Third. All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety.

Fourth. All advertising of any medicine or of any means whereby the monthly periods of women can be regulated or the menses re-established if suppressed.

Fifth. Conviction of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence.

Sixth. Habitual intemperance.

Seventh. The personation of another licensed practitioner.

Eighth. Wrongfully encouraging or conspiring with any person to bring, or cause to be brought, any action in any court against any licensed practitioner for alleged malpractice, or agreeing with any person for a share or part of any sum of money to be recovered in such action: Provided, that nothing herein shall be construed to prevent any licensed practitioner from testifying against any other licensed practitioner in any action for alleged malpractice. [L. '15, p. 238, § 1. Cf. L. '90, p. 116, § 4; 1 H. C., § 2847; L. '09, p. 684, § 11.]

See *infra*, § 10119, false personation.

See *infra*, § 10063, unprofessional conduct by osteopaths.

Cited in 92 Wash. 235, 580, 616—618, 620.

This section is not void for uncertainty in failing to furnish any standard by which it can be determined what advertisements offend: State Board of Medical

Examiners v. Jordan, 92 Wash. 234, 158 Pac. 982.

Under this section, the question of moral turpitude is not essential, as the statute determines what advertisements are bad, nor is it necessary to show that

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actual harm has come to anyone through the accused: *State Board of Medical Examiners v. Jordan*, 92 Wash. 234, 158 Pac. 982.

An advertisement enumerating six incurable diseases which the accused cures,

as well as others that are incurable in the majority of cases, shows the accused's bad faith in advertising with intent to deceive, within this section: *State Board of Medical Examiners v. Jordan*, 92 Wash. 234, 158 Pac. 982.

§ 10016. [8398.] Reasons for Revocation Filed.

In any case of the refusal or revocation of a license by said board under the provisions of this chapter, said board shall file a brief and concise statement of the grounds and reasons for such refusal or revocation in the office of the secretary of said board, which said statement, together with the decision of said board, in writing, shall remain of record in said office. [L. '09, p. 685, § 12.]

Cited in 68 Wash. 358.

The loss or destruction of the statement of the medical board showing the grounds for its refusal of license to practice, required by this section, to be filed and kept of record, does not entitle an applicant to a rehearing, other records of the board showing the rejection and rea-

sons therefor: *State ex rel. Stanley v. Witter*, 68 Wash. 356, 123 Pac. 471.

Neither does failure to notify an applicant that a license has been refused entitle him to a rehearing: *State ex rel. Stanley v. Witter*, 68 Wash. 356, 123 Pac. 471.

§ 10017. [8399.] Appeal from Order of Board—Notice, Bond, etc.

In any case of the refusal or revocation of a license by said board under the provisions of this act, the applicant whose application shall be so refused, and the licentiate whose license shall be so revoked by said board, shall have the right to appeal from the decision so refusing or revoking such license within thirty days after the filing of such decision in the office of the secretary of said board, as hereinbefore in this chapter provided. Such appeal shall be to the superior court in and for the county in which was held the last general meeting of said board, prior to the refusal of such license, in the case of such refusal; and to the superior court in and for the county in which the hearing was had upon which such license was revoked, in case of such revocation. In any case a person desiring to take such appeal shall serve or cause to be served, upon the secretary of said board, a written notice of such appeal, which shall contain a statement of the grounds of such appeal, and shall file in the office of such secretary an appeal bond, with good and sufficient surety, to be approved by said secretary, to the state of Washington, conditioned for the speedy prosecution of such appeal, and the payment of such cost as may be adjudged against him upon such appeal. Said secretary shall within ten (10) days after the service of said notice of appeal, and the filing and approval of said appeal bond, transmit to the clerk of the superior court to which such appeal is taken, a certified copy, under the seal of said board, of the decision of said board, and the grounds thereof in the case of the refusal of the license; and in addition thereto, a certified copy under such seal of the complaint in the case of the revocation of a license, together with the bond and notice of appeal. The clerk of such court shall thereupon docket such appeal causes, and they shall stand for trial in all respects as ordinary civil actions, and like proceedings be had thereon. Upon such appeal said cause shall be tried de novo. Either party may appeal from the judg-

ment of said superior court to the supreme court of the state in like manner as in civil actions within sixty (60) days after the rendition and entry of such judgment in said superior court. If such judgment shall be in favor of the party appealing from the decision of said board, and in case said examining board does not appeal from said judgment within said sixty (60) days, then, and in that case, said board shall, at the end of said sixty (60) days, and immediately upon the expiration thereof, issue to such successful party the usual license to practice medicine and surgery in this state, and in addition thereto, shall reinstate upon the records of said board the name of such successful applicant, in case of the revocation of his license by such board. In case of such appeal to the supreme court by said board, no such license shall be issued nor reinstatement be required until the final determination of said cause, and as hereinafter provided. In case the final decision of the supreme court be against said medical examining board, then, and in that case, said court shall make such order in the premises as may be necessary, and said board shall act accordingly: Provided, that in no case shall an appeal bond be required of said board, nor shall any costs be adjudged or taxed against the same. [L. '09, p. 685, § 13. Cf. L. '90, p. 117, § 6; 1 H. C., § 2849.]

See notes to § 10008.

Former laws cited in 46 Wash. 83; 61 Wash. 151, 624; 62 Wash. 60.

Cited in 92 Wash. 237, 616, 620, 622.

The court on appeal has a right to administer the provisions of the medical act relating to examinations: *Littlefield, In re*, 61 Wash. 150, 112 Pac. 234.

An appeal from the decisions of the medical board refusing a physician a license to practice, under this section, brings up for review all questions of fact, notwithstanding expert evidence may be required to determine the qualifications of the applicant, in view of the provisions requiring a trial de novo, and that the examination papers be a part of the record, and that the case stand for trial as

an ordinary civil action: *Littlefield, In re*, 61 Wash. 150, 112 Pac. 234.

This section does not provide for a trial by jury; since a jury trial is not required in all civil actions: *State Board of Medical Examiners v. Macy*, 92 Wash. 614, 159 Pac. 801.

Mandamus does not lie to review the action of the board of medical examiners in refusing a license to practice, there being an adequate remedy by appeal, under this section: *State ex rel. Brunn v. State Board of Medical Examiners*, 61 Wash. 623, 112 Pac. 746.

Review of action of medical board.
20 L. R. A. 355.

§ 10018. [8044.*] Practicing Without License—Penalty.

Any person who shall practice or attempt to practice, or hold himself out as practicing medicine and surgery in this state, without having, at the time of so doing, a valid, unrevoked certificate as provided in this act, shall be guilty of a misdemeanor. In each such conviction the fine shall be paid, when collected, to the state treasurer, and shall constitute a special fund for the prosecution of illegal practitioners as defined in this act, and the said board is authorized to prosecute all persons guilty of a violation of the provisions of this act. [L. '19, p. 379, § 8; L. '09, p. 687, § 14.]

Former laws cited in 4 Wash. 430; 28 Wash. 502; 63 Wash. 49; 80 Wash. 97, 98.

See *supra*, § 2544, practicing without a license.

See *supra*, § 10012, and notes.

Cited in 89 Wash. 671, 673; 92 Wash. 201.

Practicing Without Authority: See *Remington's Digest, Phys.*, § 5; *State v.*

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Brown, 37 Wash. 106, 79 Pac. 638; State v. Newton, 39 Wash. 491, 81 Pac. 1002; State v. Pratt, 80 Wash. 96, 141 Pac. 318; State Board of Medical Examiners v. Jordan, 92 Wash. 234, 158 Pac. 982.

Prosecutions—Information: See Remington's Digest, Phys., § 6; State v. Dechmann, 57 Wash. 690, 107 Pac. 858; State v. Greiner, 63 Wash. 46, 114 Pac. 897; State Board of Medical Examiners v. Jordan, 92 Wash. 234, 158 Pac. 982; State v. Bonham, 93 Wash. 489, 161 Pac. 377, L. R. A. 1917D, 996.

— **Evidence:** See Remington's Digest, Phys., § 7; State v. Dunham, 31 Wash.

636, 72 Pac. 459; State v. Brown, 37 Wash. 106, 79 Pac. 638; State v. Sexton, 37 Wash. 110, 79 Pac. 634; State v. Newton, 39 Wash. 491, 81 Pac. 1002; State v. Lawson, 40 Wash. 455, 82 Pac. 750; State v. Thompson, 48 Wash. 683, 74 Pac. 667; State v. Littooy, 52 Wash. 87, 100 Pac. 170, 17 Ann. Cas. 292; State v. Dodson, 54 Wash. 31, 102 Pac. 872; State v. Hanover, 55 Wash. 403, 104 Pac. 624; State v. Dechmann, 57 Wash. 690, 107 Pac. 858; State v. Greiner, 63 Wash. 46, 114 Pac. 897; Brydges v. Cunningham, 69 Wash. 8, 124 Pac. 131; State v. Pratt, 92 Wash. 200, 158 Pac. 981; State v. Austin, 103 Wash. 63, 173 Pac. 725.

§ 10019. [8401.] False Personation, a Felony.

Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in such certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [L. '09, p. 687, § 15.]

See, also, § 10015, supra.

See supra, § 2510, fraudulent prescriptions.

Cited in 82 Wash. 493, 496.

Under this section an information charging that the defendant was falsely claiming to be the person named in and entitled to a certain filed certificate which named another as the person entitled

thereto, is insufficient; since it is a necessary ingredient of the offense to file or attempt to file the certificate for record, the false claims in respect thereto not being alone sufficient: State v. Stanley, 82 Wash. 492, 144 Pac. 689.

§ 10020. [8402.*] Fraudulently Acting as Member of Board.

Any person assuming to act as a member of the state board of medical examiners without so being, or who shall sign, or subscribe, or issue, or cause to be issued, or seal, or cause to be sealed, a certificate authorizing any person to practice medicine or surgery in this state, shall be guilty of a misdemeanor. [L. '19, p. 380, § 9; L. '09, p. 687, § 16.]

See notes to § 10008.

§ 10021. [8403.*] Licenses Heretofore Issued Valid—Issuance Without Examination.

Any person who holds a license authorizing him to practice medicine and surgery from the board of medical examiners heretofore existing, under the provisions of any laws of this state, past or present, shall be entitled to practice medicine and surgery in this state the same as if issued under this act; and said board is hereby authorized to issue under proper application, but without examination, certificates to practice medicine and surgery to any person who was legally practicing medicine and surgery in this state prior to the organization of the first board of medical examiners in 1890, and also to any person who is the legal holder of a certificate of examination from the National Medical Examining Board: Provided, however, that all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same

grounds as if issued under this act. [L. '19, p. 380, § 10; L. '09, p. 687, § 17.]

§ 10022. [8404.] Laws to be Observed.

All persons granted licenses or certificates under this chapter, shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [L. '09, p. 688, § 18.]

§ 10023. Licenses of Other States.

Applicants for a certificate, who have been examined and licensed by a state board of medical examiners of another state, which through a reciprocity provision in its law, similarly accredit the holders of certificates from the board of medical examiners of this state to the full privileges of practice within its borders, on payment of a fee of twenty-five dollars to the board, and on filing with the secretary of the board a copy of such license certified by the president or secretary of the state board of medical examiners issuing the same to be a full, true copy thereof, and showing also that the standard of requirements adopted by such state board of medical examiners as provided by the law of such state is equal to that provided for by the provisions of this act, shall without further examination receive a certificate to practice medicine and surgery in this state: Provided, that such applicant has not previously failed at an examination held by the board of medical examiners of this state. [L. '19, p. 380, § 11.]

See notes to § 10008.

§ 10024. [8405.*] Application and Construction of Act.

Nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies, or the practice of midwifery; nor shall this act apply to any commissioned medical officer in the United States army, navy, or marine hospital service, in the discharge of his official duties; nor to any licensed dentist when engaged exclusively in the practice of dentistry; nor shall this act apply to any practitioner from any other state or territory in which he resides: Provided, that such practitioner shall not open an office or appoint a place of meeting patients or receive calls within the limits of this state. This act shall not be construed to apply in any manner to the practice of osteopathy or to any drugless method of treating the sick or afflicted, or to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer; nor to any person now holding a license from the state board of medical examiners for any system of drugless practice. [L. '19, p. 381, § 12; L. '09, p. 688, § 19.]

Cited in 80 Wash. 98.

This section does not exclude from the operation of the chapter the practice of suggestive therapeutics, a system of treating the sick by the laying on of hands with suggestions from the mind of the operator to the mind of the patient;

since the same is not any kind of treatment by prayer: State v. Pratt, 80 Wash. 96, 141 Pac. 318.

One who treats the sick by a method called "Suggestive Therapeutics," consisting of the laying on of hands and giving mental suggestions, cannot escape conviction.

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tion for practicing without a license, as that is a mere subterfuge to bring the case within the proviso to the statutes: under this section, by the fact that, before treatment, he assured the patient that the treatment was by prayer only, State v. Pratt, 92 Wash. 200, 158 Pac. 981.

§ 10025. [8407.] “Certificate” and “License” Same.

The words “certificate” and “license” shall be known as interchangeable terms in this chapter. [L. '09, p. 688, § 21.]

Cited in 59 Wash. 318; 93 Wash. 492.

CHAPTER II.

DEAD BODIES.

§ 10026. [8408.] Who may Possess Subjects for Purposes of Instruction.

Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession, human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [L. '91, p. 227, § 1; 1 H. C., § 2428.]

See supra, § 2490, right of burial.

See supra, § 2491, stealing dead bodies.

See supra, § 6040, public morgues.

See supra, § 8313, embalmers.

Rights as to Burial: See Remington's Dig., Dead Bodies, §§ 1—4, and cases cited.

§ 10027. [8409.] Body may be Dissected, When.

Any sheriff, coroner, keeper of a county poorhouse, public hospital, county jail, or state prison must surrender the dead bodies of such persons as are required to be buried at the public expense to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being always given to medical schools by law established in this state, for their use in the instruction of medical students. But if such deceased person during his last sickness requested to be buried, or if within forty-eight hours after his death some person claiming to be a kindred or a friend of deceased requires the body to be buried, or if such deceased person was a stranger or traveler who suddenly died before making himself known, such dead body must be buried without dissection. [L. '91, p. 227, § 2; 1 H. C., § 2429.]

§ 10028. [8410.] Conditions Precedent to Receiving Body.

Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose in this state only, and so as in no event to outrage the public feeling. [L. '91, p. 227, § 3; 1 H. C., § 2430.]

§ 10029. [8411.] Penalty for Violation of This Act.

Any person violating any provision of this chapter shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars. [L. '91, p. 227, § 4; 1 H. C., § 2431.]

CHAPTER III.

DENTISTRY.

§ 10030. [8416.] Examinations—Certificate.

Any person or persons seeking to practice dentistry in the state of Washington, or to [own,] operate or cause to be operated, [or to run or manage] a dental office or place for the practice of dentistry in the state of Washington after the passage of this act shall file his or her name, together with an application for examination, with the secretary of the state board of dental examiners, and at the time of making such application shall pay to the secretary of the board a fee of twenty-five dollars, and to present him or herself at the first regular meeting thereafter of said board to undergo examination before that body. No person shall be eligible for such an examination unless he or she shall be of good moral character and shall present to said board his or her diploma from some dental college in good standing and shall give satisfactory evidence of his or her rightful possession of the same: Provided, this section shall not apply to persons engaged in the practice of dentistry at the time of the passage of this act who are bona fide citizens of the state of Washington. All persons successfully passing such examination shall be registered as licensed dentists in the board register as hereinafter provided, and also receive a certificate, said certificate to be signed by the president and secretary of said board and in substantially the following form, to wit:

This is to certify that — is hereby licensed to practice dentistry in the state of Washington. This certificate must be filed for record in the office of the auditor of any county in which the party holding such certificate desires to practice, and it is unlawful for him (or her) to practice dentistry in any county in which said certificate is not filed for record.

Dated at — this — day of —, A. D. 190—.

_____,
(President of said board of examiners.)

_____,
(Secretary of said board.)

[L. '93, p. 89, § 4; L. '01, p. 314, § 1.]

Unconstitutional as to the words in brackets.

See *infra*, § 10854, duties devolve upon director of licenses.

See *infra*, § 10893, board of dental examiners abolished.

Cited in 36 Wash. 314, 378, 379; 37 Wash. 98; 39 Wash. 702; 48 Wash. 292. *Brown v. State*, 59 Wash. 195, 109 Pac. 802.

Constitutionality of This Act: See *Remington's Digest, Phys.*, § 2; *Thompson, In re*, 36 Wash. 377, 78 Pac. 899, 2 Ann. Cas. 149; *State ex rel. Smith v. Dental Examiners*, 31 Wash. 492, 72 Pac. 110; *State v. Sexton*, 37 Wash. 110, 79 Pac. 634; *State v. Thompson*, 48 Wash. 683, 94 Pac. 667; Restricting the right to own, run or manage a dental office is not a proper exercise of the police power, since technical knowledge or skill is not essential to the proper exercise of such right, and is not required for the well-being of the public, and the acts in question do not injuri-

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ously affect the health, good order, or safety of society: State v. Brown, 37 Wash. 97, 79 Pac. 635, 107 Am. St. Rep. 798, 68 L. R. A. 889.

Practicing With Authority, and Prosecutions: See Remington's Digest, Phys., §§ 5—7, and cases cited.

It was sufficient if it appears that a fee was charged for a series of acts of which the act complained of was one, and that payment was made at any time within one year, for an act performed within one year of the filing of the information: State v. Brown, 37 Wash. 106, 79 Pac. 638.

The taking of an impression of jaws for the purpose of making false teeth and the fitting and adjustment of the same constitute a "correction of malposition of the jaws," within the statute requiring a license for the practice of dentistry: State v. Newton, 39 Wash. 491, 81 Pac. 1002.

A conviction of practicing dentistry without a license is sustained where the accused had no license and admitted putting medicine on a patient's gums because they were sore: State v. Austin, 103 Wash. 63, 173 Pac. 725.

An information for practicing dentistry without a license, in the language of the statute, is sufficient without alleging the nature of the disease or lesion or the treatment: State v. Austin, 103 Wash. 63, 173 Pac. 725.

Evidence of Practicing Without a License: See Remington's Digest, Phys., § 7; State v. Brown, 37 Wash. 106, 79 Pac. 638; State v. Sexton, 37 Wash. 110, 79 Pac. 634; State v. Newton, 39 Wash. 491, 81 Pac. 1002; State v. Thompson, 48 Wash. 683, 74 Pac. 667; State v. Littooy, 52 Wash. 87, 100 Pac. 170, 17 Ann. Cas. 292.

Right of corporation to practice dentistry. 19 Ann. Cas. 882.

§ 10031. [8417.] Certificate to be Recorded.

The certificates in this chapter provided for shall entitle the holder thereof to practice dentistry in any county in the state of Washington: Provided, such certificate shall first be filed for record in the office of the auditor of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this state unless such certificate shall have been first recorded in the office of the auditor of such county as herein provided: Provided further, that any such holder of a certificate may practice in more than one or any number of counties in this state on having such certificate recorded in each of such counties in which such holder desires to so practice. Said board of dental examiners shall, upon satisfactory proof of the loss of any certificate issued under the provisions of this chapter, issue a new certificate in place thereof. Any person failing to pass the first examination successfully may demand a second examination at a subsequent meeting of said board, and no fee shall be charged to [for] said examination: Provided, that the second examination is taken before the expiration of one year. [L. '93, p. 91, § 5.]

See notes to § 10030.

§ 10032. [8418.] Register of Practicing Dentists—Certificate.

Every person having been admitted to the practice of dentistry by said board in this state after the approval of this act shall on or before the first day of July, 1901, cause his or her name, residence and place of business to be registered with the board of dental examiners, if not already registered. A statement of every such person that he was engaged in the practice of dentistry in this state at the time of approval of this act shall be verified under oath by him and placed with the board of dental examiners. It shall be the duty of the secretary of the said board to send to each person registered under the provisions of this act without fee a certificate similar in form to the other certificate provided for by this act, signed by the president and secretary of said board of

examiners, which certificate the holder thereof shall have recorded with the county auditor of the county in which the holder desires to practice, within ninety days from the date of said certificate. [L. '93, p. 91, § 6; L. '01, p. 315, § 2.]

See notes to § 10030.

"Act" in this section refers to this chapter.

§ 10033. [8419.] Firms to Display Names of Employees.

Hereafter if any association or company of persons, whether incorporated or not, shall engage in the practice of dentistry under the name of "company," "association," or any other title, said company or association shall cause to be displayed and kept in a conspicuous place at the entrance to its place of business the name of each and every person employed by said company or association in the practice of dentistry; and any person employed by such company or association whose names shall not be displayed as above provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided, and the said association or company, if incorporated, or the persons comprising the same if not incorporated, shall for such failure to display the aforesaid name be guilty of a misdemeanor, and upon conviction thereof, shall be punished as hereinafter provided. [L. '01, p. 316, § 3.]

All of the act of 1901, except this section, was amendatory of sections of the earlier act.

§ 10034. [8420.] Auditor's Record.

The county auditor of each county is required to record, in a special book to be kept by him for that purpose, all certificates issued under the provisions of this chapter which may be presented to him for that purpose. After the record of any such certificate, such auditor shall return the same with a certificate of its record to the party entitled to the same. Said auditor shall receive for such filing and record a fee of one dollar. [L. '93, p. 92, § 7.]

§ 10035. [8421.] Penalty.

Any person who, as principal, agent, employer, employee or assistant, who in any manner whatsoever shall practice dentistry or who shall [own, run] operate or cause to be operated, [or manage] a dental office or headquarters in the state of Washington without having first filed for record and had recorded in the office of the auditor of the county wherein he shall so practice or do such act, a certificate from said board of dental examiners as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than fifty dollars, nor more than two hundred dollars, or be confined for any period not exceeding six months in the county jail for each and every offense: Provided, the foregoing provisions of this section shall not, prior to the tenth day of July, 1901, apply to any person who shall be practicing dentistry in this state at the time of the passage of this act and whose name shall be registered under the provisions of this act in the records of said board. After said tenth day of July, 1901, all the provisions of this section shall apply to all persons whomsoever. All fines recovered under this

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act shall be paid into the common school fund of the county in which the conviction is had. [L. '93, p. 92, § 8; L. '01, p. 316, § 4.]

Void as to the bracketed words.

See supra, § 2544, practicing without a license.

See notes to § 10030, supra.

Cited in 37 Wash. 98; 59 Wash. 195.

An information for practicing dentistry without a license, in the language of the statute, is sufficient without alleging the nature of the disease or lesion or the treatment: State v. Littooy, 52 Wash. 87, 100 Pac. 170, 17 Ann. Cas. 292.

A complaint for practicing medicine without a license is sufficient where the acts constituting the offense are set forth in ordinary concise language without repetition in such manner as to enable a per-

son of common understanding to know what was intended: State v. Greiner, 63 Wash. 46, 114 Pac. 897.

An act providing a penalty for practicing dentistry without a license is not unconstitutional because of the failure of the title to specify that the act provides for a penalty, since the title of the act, "An act to regulate the practice of dentistry in the state of Washington," is comprehensive enough to include the means necessary to effect the object sought by the statute: State ex rel. Smith v. Dental Examiners, 31 Wash. 492, 72 Pac. 110.

§ 10036. [8422.] Certificate of Auditor as Evidence.

In any prosecution for misdemeanor under the provisions of this chapter, the certificate of the county auditor of the county within which such misdemeanor is alleged to have been committed, to the effect that there is no certificate of the board of dental examiners of this state on file in such auditor's office, issued under the provisions of this chapter to the person accused of such misdemeanor, shall be sufficient proof prima facie that such person is not entitled to practice dentistry in such county. [L. '93, p. 92, § 9.]

Cited in 52 Wash. 95.

This section is not exclusive and does

not preclude other proof: State v. Littooy, 52 Wash. 87, 100 Pac. 170.

§ 10037. [8423.] Fees—Compensation of Board.

Each member of the board of dental examiners shall receive a compensation of five dollars a day for each day in which he is actually and necessarily engaged in attendance upon the meetings of the board, and in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings; all such compensation and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board as in the case of state officers. The secretary of said board shall receive a compensation to be determined by said board not to exceed one hundred dollars per annum. He shall give surety bond to be approved by and deposited with the auditor of the state in the sum of one thousand dollars. The costs of said board shall be paid by the state. All money received or collected by said board or any member or officer thereof during any month shall be turned over to the state treasurer before the tenth day of the succeeding month together with a verified statement showing the sources from which such money was derived. The board shall make an annual report of its proceedings to the governor on or before the first day of January of each year together with an account of money received and disbursed by them pursuant to this act. [L. '13, p. 254, § 1. Cf. L. '93, p. 93, § 10.]

See notes to § 10030.

Cited in 50 Wash. 102, 103.

Where private counsel of the state dental board assisted in prosecutions instituted by the board, it will be presumed that the prosecuting attorney consented thereto as required by this section: State Board of Dental Examiners, 50 Wash. 100, 96 Pac. 693.

The authority of the state dental board

to employ private counsel does not depend upon the consent of the prosecuting attorney, under this act, requiring the consent of the prosecuting attorney to assistance by private counsel in prosecutions by the state dental board; consent being necessary only to participation in the prosecution: Stern v. State Board of Dental Examiners, 50 Wash. 100, 96 Pac. 693.

§ 10038. [8424.] Practicing Dentistry Defined.

All persons shall be said to be practicing dentistry within the meaning of this chapter who shall contrary to this act for a fee or salary or other reward paid either to himself or another person for operations or parts of operations of any kind, treat diseases or lesions of the human teeth or of jaws or correct malpositions thereof, [or who shall own, run or manage a dental office or department] in the state of Washington, without registering and procuring the license as herein provided. [L. '93, p. 93, § 11; L. '01, p. 317, § 5.]

Void, as to the words in brackets: See note to § 10030.

Cited in 37 Wash. 98; 48 Wash. 684.

§ 10039. [8425.] Duties of Prosecuting Attorney.

It shall be the duty of the prosecuting attorney for each county to attend to the prosecution of all complaints made under this chapter, both upon the preliminary hearing in the justice court, or before any magistrate before whom such complaint may be made, and also upon any hearing in the court, either upon such complaint or upon any information or indictment filed against any person under this act: Provided, nothing in this chapter shall be construed to prevent the prosecution of any person for violation of any provision of this chapter upon information of the prosecuting attorney directly. The attorney general of this state shall appear in the supreme court and attend to the prosecution of all criminal cases arising under this chapter which may be appealed to said court or be taken to said court by writ of error. [L. '93, p. 94, § 12.]

Cited in 28 Wash. 502.

CHAPTER IV.

VETERINARY.

§ 10040. [8426.] Veterinary Practice Defined.

Any person who shall be regarded as practicing veterinary medicine, surgery and dentistry within the meaning of this chapter who shall, within this state, (a) by advertisement, or by any notice, sign, or other indication, or, by a statement written, printed or oral, in public or private, made, done, or procured by himself or herself, or any other, at his or her request, for his or her, claim, announce, make known or pretend his or her ability or willingness to diagnose or prognose diseases, deformities, defects, wounds, or injuries of animals; (b) or who shall so advertise or make known or claim his or her ability and willingness to prescribe or administer any drug, medicine, treatment, method or practice, or to per-

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form any operation, manipulation, or apply any apparatus or appliance for cure, amelioration, correction or reduction or modification of any animal disease, deformity, defect, wound, or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted, directly or indirectly; (c) or who shall within this state diagnose or prognose any animal diseases, deformities, defects, wounds or injuries, for hire, fee, reward, or compensation promised, offered, expected, received, or accepted directly or indirectly; (d) or who shall within this state prescribe or administer any drug, medicine, treatment, method or practice, or perform any operation, or manipulation, or apply any apparatus or appliance for the cure, amelioration, alleviation, correction, or modification of any animal disease, deformity, defect, wound, or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted directly or indirectly. [L. '07, p. 228, § 1.]

Cited in 59 Wash. 320.

§ 10041. [8427.] Practice Unlawful, When.

It shall be unlawful for any person to practice the profession of veterinary medicine, surgery, or dentistry in this state, who shall not have complied with the provisions of this chapter. [L. '07, p. 229, § 2.]

§ 10042. [8428.] Practitioners Entitled to Registration.

Any person who has practiced the profession of veterinary medicine, surgery and dentistry as herein defined in this state for a period of two years immediately preceding the passage of this act may be deemed eligible to registration as an existing practitioner, and upon presentation to the secretary of the board of veterinary medical examiners, which shall be hereinafter constituted, his sworn affidavit and letters of recommendation from ten responsible freeholders and stock owners in his locality, all such applications to be made on or before July 1, 1907. [L. '07, p. 229, § 3.]

See *infra*, § 10854, duties of board devolve upon director of licenses.

See *infra*, § 10893, board of veterinary medical examiners abolished.

§ 10043. [8429.] Graduates of Veterinary College—Registration on Diploma.

Any person who is a graduate of a legally chartered and authorized veterinary college or veterinary department of any university or agricultural college, at the time of the passage of this act, or who shall hold a diploma from such institution prior to 1908, shall be entitled to registration as an existing practitioner upon the presentation of his diploma, duly verified: Provided, that this shall apply also to any member of the medical profession who can certify that he is a graduate of any reputable medical college in the United States, Canada or Great Britain. [L. '07, p. 229, § 4.]

§ 10044. [8431.] Powers of Board.

This board shall have power to make all needed regulations for its government and proper discharge of its duties in accordance with this

chapter, and shall have power to administer oaths, and take testimony concerning all matters within its jurisdiction. [L. '07, p. 230, § 6.]

See notes to § 10042.

§ 10045. [8433.] Certificates to Existing Practitioners.

Said board shall receive applications for registration, according to sections 10042 and 10043, and shall issue a certificate of qualification to all applicants who conform to the requirements for such registration, signed by the members of the board: Provided, that the certificate thus granted specifically and plainly states whether or not the one to whom it is granted is a graduate in veterinary medicine. Such certificate shall be conclusive as to the rights of the lawful holder of the same to practice veterinary medicine, surgery, or dentistry in this state. [L. '07, p. 230, § 8.]

See notes to § 10042.

§ 10046. [8434.] Fees.

The fee of registration shall be five dollars payable in advance to the secretary of the board. [L. '07, p. 231, § 9.]

§ 10047. [8435.] Examination—License—Fee.

From and after July 1, 1907, any person not authorized to practice veterinary medicine, surgery, or dentistry in this state, and desiring to enter upon such practice, shall pass the examination required by said board of veterinary medical examiners. Any person passing the required examination shall be eligible to and shall receive a license to practice veterinary medicine, surgery, or dentistry within this state which license shall be signed by the members of the board. This license shall be recorded in the office of the recorder of the county in which said person resides, the recording fee to be paid by holder of certificate. The fee for such examination shall be fifteen dollars payable in advance to the secretary of the board. [L. '07, p. 231, § 10.]

§ 10048. [8436.] Temporary Certificate, Pending Meeting of Board.

Any person who is a graduate of a duly chartered recognized veterinary college or veterinary department of a university or agricultural college, who shall make application for examination under this chapter shall be given a temporary certificate to practice veterinary medicine, surgery and dentistry until the first meeting thereafter called and held by the board and no longer. Such temporary certificate must be surrendered at time of such meeting. Failure to surrender such certificate upon receipt of notice from the secretary of said board shall constitute a misdemeanor and shall subject the offender to the penalties provided in section 10051. [L. '07, p. 231, § 11.]

§ 10049. [8437.] Registry of Practitioners—Disposition of Fees and Funds.

The board shall keep a register of all registered practitioners in the state setting forth such facts as the board may see fit. All money received or collected by said board or any member or officer thereof

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during any month shall be turned over before the tenth day of the succeeding month to the state treasurer together with a verified statement showing the sources from which such money was derived. The treasurer of said board shall give surety bond to be approved and deposited with the auditor of the state in the sum of one thousand dollars. The cost of said bond shall be paid by the state. [L. '13, p. 253, § 1. Cf. L. '07, p. 231, § 12.]

See notes to § 10042.

§ 10050. [8438.] Compensation of Board.

Each member of the board of veterinary medical examiners shall receive a compensation of five dollars per day for each day in which he is actually and necessarily engaged in attendance upon the meetings of the board and in going to and returning from the place of meeting and all necessary expenses incurred in attending such meetings. All such compensation and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board as in the case of state officers. The secretary and treasurer of the board shall each receive a compensation to be determined by said board and not to exceed fifty dollars per annum. [L. '13, p. 253, § 2. Cf. L. '07, p. 232, § 13.]

See notes to § 10042.

§ 10051. [8439.] Penalty for Violations of Act.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not more than thirty days for each and every such offense. It shall be the duty of the county attorney of the county in which such violation occurs to conduct all proceedings against violators of this chapter. [L. '07, p. 232, § 14.]

§ 10052. [8440.] Persons Excepted from Operation of Act.

Nothing in this chapter shall be construed to apply to commissioned veterinarians in the United States army or to persons who only dehorn or vaccinate cattle, or castrate or spay domestic animals, or to persons who gratuitously treat diseased animals. [L. '07, p. 232, § 15.]

Cited in 106 Wash. 166.

The gratuitous administration of hog cholera serum by one who is not a licensed veterinarian, and whose charge was merely for serum manufactured by him, does not violate this section, and

does not render the manufacturer liable for the loss of hogs, there being no negligence in the manufacture or treatment: *Peechos v. Johnson*, 106 Wash. 163, 179 Pac. 78.

§ 10053. [8441.] Unlawfully Advertising as Veterinarian—Penalty.

Any person who shall, without having been authorized so to do legally, append any veterinary title to his name, or shall assume or advertise any veterinary title in such a manner as to convey the impres-

sion that he is a lawful practitioner of veterinary medicine or any of its branches, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished according to the provisions of section 10051 of this chapter. [L. '07, p. 232, § 16.]

§ 10054. [8442.] Re-examination.

In case the examination of any person shall prove unsatisfactory and his name be not registered he shall be permitted to present himself for re-examination within any period not exceeding twelve months next thereafter, and no charges shall be made for re-examination. [L. '07, p. 232, § 17.]

§ 10055. [8443.] Board to Render Account to Governor.

The board shall render on or before January 1st of each year to the governor a concise statement or report of all matters pertaining to the duties imposed upon the board in this act and making such suggestions as they shall deem expedient and proper. [L. '13, p. 254, § 3. Cf. '07, p. 232, § 18.]

See notes to § 10042.

CHAPTER V.

OSTEOPATHY.

§ 10056. Certification—Forms—Qualifications to Practice.

Two forms of certificates shall be issued by said board under the seal thereof, and signed by the president and secretary-treasurer: First, a certificate authorizing the holder thereof to practice osteopathy; second, a certificate authorizing the holder thereof to practice osteopathy and surgery.

In order to procure a certificate to practice osteopathy, the applicant for such certificate must file with said board at least thirty days prior to a regular meeting thereof, satisfactory testimonials of good moral character, and a diploma issued by some legally chartered school of osteopathy and surgery, the requirements of which shall have been at the time of granting such diploma in no particular less than those prescribed by the Association of Osteopathic Colleges for that year, or satisfactory evidence of having possessed such diploma, and he must file with such diploma an application sworn to before some person authorized to administer oaths, and attested by the hand and seal of such officer, if he have a seal, stating that he is the person named in said diploma, that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation. The said application shall be made upon a blank furnished by said board, and it shall contain such information concerning said medical instruction and the preliminary education of the applicant as said board may by rule provide: Applicants who have failed to meet the requirements must be rejected.

An applicant for a license to practice osteopathy and surgery must furnish evidence that he has served for not less than one year as interne in a thoroughly equipped hospital which shall have had at least twenty-

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five beds for each interne devoted to the treatment of medical, surgical, gynecological and special diseases, and he also must have had a service of six weeks, or the equivalent thereof in the maternity department of the same or some other hospital, during which time he shall have attended or participated in the attendance upon not less than six confinements. He shall furnish evidence that he has had sufficient experience in and a practical working knowledge of pathology, and the administering of anaesthetics: Provided that when an applicant who has graduated before July, 1917, has not completed one year as interne as above provided, he must furnish evidence that he has been engaged in the active practice of osteopathy for a period of at least two years prior to that date: Provided further, that any person holding a valid unrevoked certificate to practice osteopathy in the state of Washington who is a graduate of a college recognized by the Association of Osteopathic Colleges and desiring a certificate to practice osteopathy and surgery shall be examined in surgery and the management of surgical cases (including anaesthetics) and be granted said certificate if satisfactorily passing said examination. [L. '19, p. 5, § 4.]

"Said board" the board of osteopathic examiners.

See *infra*, § 10854, duties devolve upon director of licenses.

See *infra*, § 10893, board of osteopathic examiners abolished.

Validity of special regulation of osteopathy. *Ann. Cas.* 1917B, 798.

§ 10057. Examination of Applicants.

In addition to the requirements above set forth, such applicants for a certificate must be personally examined by said board as to their qualifications. The examination shall be conducted in the English language, shall be practical in character and designed to discover the applicant's fitness to practice osteopathy, and shall be in whole or in part in writing on the following fundamental subjects, to wit: Anatomy, histology, gynecology, pathology, bacteriology, chemistry, toxicology, physiology, obstetrics, general diagnosis, hygiene, principles and practice of osteopathy and any other branches thereof that the board shall deem advisable. Provided, that those seeking a certificate to practice osteopathy and surgery shall also taken [take] an examination in surgery and the management of surgical cases (including anaesthetics) before being granted said certificate. Examination in each subject shall consist of not less than ten questions, answers to which shall be marked upon a scale of zero to ten. All applicants must obtain not less than sixty per cent in any one subject. The examination papers shall form a part of the records of the board and shall be kept on file by the secretary for a period of one year after examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application. [L. '19, p. 7, § 5.]

See notes to § 10056.

§ 10058. Examination and License Fees — Annual License Fee — Disposition—Bond—Expenses.

Each applicant on making application shall pay the secretary-treasurer of the board a fee of twenty-five dollars (\$25) which shall be paid

to the state treasurer by said secretary-treasurer and used to defray the expenses and compensation of said board. In case the applicant's credentials are insufficient, or in case he does not desire to take the examination, the sum of fifteen dollars (\$15) shall be returned. All persons licensed to practice osteopathy or osteopathy and surgery within this state who are engaged in active practice shall pay on or before the first day of May of each year to the secretary-treasurer of the said board a renewal license fee of five dollars (\$5), except that the first payment after the passage of this act shall be paid on or before the first day of August 1917. This fee shall be reduced to two (\$2) dollars after 1925. Licenses not so renewed will not be valid. The secretary-treasurer shall thirty (30) days or more before May 1st of each year mail to all active practitioners of osteopathy or osteopathy and surgery in this state at their last known address a notice of the fact that the renewal fee will be due on or before the first of May: except that the first notice after the passage of this act shall be sent on or before July 11, 1917. Nothing in this act shall be construed so as to require that the receipt shall be recorded as original licenses are required to be recorded.

All money received or collected by said board or any member or officer thereof, during any month, shall be turned over, before the tenth day of the succeeding month to the state treasurer together with a verified statement showing the sources from which such money was derived. The secretary-treasurer of said board shall give surety bond to be approved by and deposited with the auditor of the state, in the sum of one thousand dollars (\$1,000), the cost of said bond shall be paid by the state.

Each member of said board shall receive a compensation of five dollars (\$5) per day for each day in which he is actually and necessarily engaged in attendance upon meetings of the board, in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings. All such compensation and expenses, and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers: Provided the expense does not exceed the receipts of said board. The secretary-treasurer of said board shall receive a compensation to be determined by said board not to exceed fifty (\$50) dollars per annum. [L. '19, p. 8, § 6.]

See notes to § 10056.

§ 10059. Records of Board.

Said board shall keep an official record of all its proceedings, a part of which record shall consist of a register of all applicants for certificates under this act, with the result of such application. Said record shall be evidence of all the proceedings of said board which are set forth therein. [L. '19, p. 9, § 7.]

§ 10060. Recordation of Certificates.

Every person holding a certificate authorizing him to practice osteopathy or osteopathy and surgery in this state, must have it recorded in

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the office of the county clerk of the county in which the holder of said certificate is practicing his profession, and the fact of such recording shall be indorsed on the certificate by the county clerk recording the same. Every such person, on each change of his residence, must have the certificate recorded in the county to which he shall have changed his residence. The absence of such record shall be prima facie evidence of the want of possession of such certificate. And any person holding a certificate to practice osteopathy or osteopathy and surgery in this state who shall attempt to practice osteopathy or osteopathy and surgery in this state without first having filed his certificate with the county clerk as herein provided, shall be guilty of a misdemeanor. [L. '19, p. 9, § 8.]

§ 10061. County Clerk's Record and Duties.

The county clerk shall keep in a book provided for the purpose, a complete list of the certificates recorded by him, with the date of the record; and said book shall be open to public inspection during his office hours. The county clerk shall forthwith give written notice to the secretary of the board, notifying him of the name of each licensee recorded after this act shall go into effect, together with the date of such recording. [L. '19, p. 10, § 9.]

§ 10062. Refusal of Certificate for Unprofessional Conduct—Procedure.

Said board must refuse a certificate to any applicant guilty of unprofessional conduct; but before such refusal the applicant must be cited by citation, signed by the secretary-treasurer of the board, and sealed with its seal. No such citation shall be issued except upon a sworn complaint filed with the secretary-treasurer of the board, charging the applicant with having been guilty of unprofessional conduct, and setting forth the particular act constituting such unprofessional conduct. On filing of such complaint the secretary-treasurer must forthwith issue a citation and make the same returnable at a regular or special meeting of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant of the time and place when and where the matter of said unprofessional conduct shall be heard, the particular unprofessional conduct with which the applicant is charged, and that the applicant shall file his written answer, under oath, within twenty days next after service upon him of said citation, or default will be taken against him, and his application for certificate refused. The attendance of witnesses at such hearing shall be compelled by subpoenas issued by the secretary-treasurer of the board under its seal; and said secretary-treasurer shall in no case refuse to issue any such subpoena, upon a fee of twenty cents being paid him for each subpoena. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of summons and subpoenas generally and all provisions of the statutes of this state then in force relating to subpoenas are hereby made applicable to the subpoenas provided for herein. If any person refuses to obey a subpoena served upon him in accordance with the statutes of this state then in force providing for the manner of service [of] subpoenas, the fact of such refusal shall be certified by the secretary-treasurer of said board,

under the seal thereof, to the superior court of the county in which the service was had and the said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempt for disobedience of process of the court, and should said court find that the subpoena had been legally served and that the party so served has willfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct arising under this act, testimonies of witnesses may be taken, the same as in civil cases, and all the provisions of the statutes of this state then in force as to the taking of testimony are hereby made applicable to the taking of depositions under this section. If the applicant shall fail to file with the secretary-treasurer of said board his answer, under oath, to the charges made against him, within twenty days after service on him of said citation or within such further time as the board may give him, and the charges on their face be deemed sufficient by the board, default shall be entered against him and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. No certificate shall be refused on the grounds of unprofessional conduct unless the applicant has been guilty of such conduct within two years next preceding his application. Whenever any holder of a certificate to practice osteopathy or osteopathy and surgery in this state is guilty of unprofessional conduct, as the same is defined in this act, and said unprofessional conduct has been brought to the attention of the board in the manner hereinafter pointed out, or whenever a certificate has been procured by fraud or misrepresentation, or issued by mistake, it shall be their duty to, and they must, revoke the same at once, and the holder of said certificate shall not be permitted to practice osteopathy or osteopathy and surgery in this state. But no revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary-treasurer in all cases of revocation shall enter on his register the fact of such revocation and shall certify the fact of such revocation under the seal of the board, to the county clerk of each county in which the certificate of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register the certificate of such person, the following: "This certificate was revoked on the — day of —, —," giving the day, month and year of revocation in accordance with certification to him by the secretary-treasurer. The record of such revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all the proceedings of said board in the matter of said revocation. From the time of the revocation of a certificate the holder thereof shall be disqualified from practicing osteopathy or surgery in this state. [L. '19, p. 10, § 10.]

See notes to § 10056.

§ 10063. Unprofessional Conduct Defined.

The words "unprofessional conduct," as used in this chapter, are hereby declared to mean:

First. The procuring, or aiding or abetting in procuring a criminal abortion.

Second. The willfully betraying of a professional secret.

Third. All advertising of any kind or character other than the carrying of a professional card, window or street sign.

Fourth. All advertising of any medicine or of any means whereby the monthly periods of women can be regulated or the menses re-established if suppressed.

Fifth. Conviction of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence.

Sixth. Habitual intemperance.

Seventh. The personation of another licensed practitioner of a like or different name.

Eighth. Exploiting or advertising through the press, or by the use of handbills, circulars or other periodicals, other than professional cards, giving only name, address, profession, office hours and telephone connections. [L. '19, p. 13, § 11.]

See notes to § 10056.

§ 10064. Record of Revocation and Refusal of Licenses.

In any case of the refusal or revocation of a license by said board under the provisions of this act, said board shall file a brief and concise statement of the grounds and reasons for such refusal or revocation in the office of the secretary-treasurer of said board, which said statement, together with the decision of said board, in writing, shall remain of record in said office. [L. '19, p. 13, § 12.]

§ 10065. Appeals from Action of Board—Procedure.

In any case of the refusal or revocation of a license by said board under the provisions of this act, the applicant whose application shall be so refused, and the licentiate whose license shall be so revoked by said board, shall have the right to appeal from the decision so refusing or revoking such license within thirty days after the filing of such decision in the office of the secretary-treasurer of said board, as hereinbefore in this chapter provided. Such appeal shall be to the superior court in and for the county in which was held the last general meeting of said board, prior to the refusal of such license, in the case of such refusal; and to the superior court in and for the county in which the hearing was had upon which such license was revoked, in case of such revocation. In any case a person desiring to take such appeal shall serve or cause to be served upon the secretary-treasurer of said board, a written notice of such appeal, which shall contain a statement of the grounds of such appeal, and shall file in the office of such secretary-treasurer an appeal bond, with good and sufficient surety, to be approved by said secretary-treasurer to the state of Washington, conditioned for the speedy prosecution of such appeal, and the payment of such cost as may be

adjudged against him upon such appeal. Said secretary-treasurer shall within ten (10) days after the service of said notice of appeal, and the filing and approval of said appeal bond, transmit to the clerk of the superior court to which such appeal is taken, a certified copy, under the seal of said board, of the decision of said board, and the grounds thereof in the case of the refusal of the license; and in addition thereto, a certified copy under such seal of the complaint in the case of the revocation of a license, together with the bond and notice of appeal. The clerk of such court shall thereupon docket such appeal causes, and they shall stand for trial in all respects as ordinary civil actions, and like proceedings be had thereon. Upon such appeal said cause shall be tried de novo. Either party may appeal from the judgment of said superior court to the supreme court of the state in like manner as in civil actions within sixty (60) days after the rendition and entry of such judgment in said superior court. If such judgment shall be in favor of the party appealing from the decision of said board, and in case said examining board does not appeal from said judgment within sixty (60) days, then in that case, said board shall, at the end of said sixty (60) days, and immediately upon the expiration thereof, issue to such successful party the usual license to practice osteopathy or osteopathy and surgery in this state, and in addition thereto, shall reinstate upon the records of said board the name of such successful applicant, in case of the revocation of his license by such board. In case of such appeal to the supreme court by said board, no such license shall be issued nor reinstatement be required until the final determination of said cause, and as hereinafter provided. In case the final decision of the supreme court be against said medical examining board, then, and in that case, said court shall make such order in the premises as may be necessary, and said board shall act accordingly: Provided, that in no case shall an appeal bond be required of said board, nor shall any costs be adjudged or taxed against the same. [L. '19, p. 14, § 13.]

See notes to § 10056.

§ 10066. Illegal Practice a Misdemeanor—Disposition of Fines.

Any person who shall practice or attempt to practice, or hold himself out as practicing osteopathy or osteopathy and surgery in this state, without having, at the time of so doing, a valid, unrevoked certificate as provided in this act, shall be guilty of a misdemeanor. In each such conviction the fine shall be paid, when collected, to the state treasurer, and shall constitute a special fund to be used by the board created in this act, for the prosecution of illegal practitioners as defined in this act, and the said board is authorized to prosecute all persons guilty of a violation of the provisions of this act. [L. '19, p. 15, § 14.]

§ 10067. False Personation of Certificate Holder.

Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in such certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction

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thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [L. '19, p. 16, § 15.]

§ 10068. Wrongfully Acting as Board Member.

Any person assuming to act as a member of the state board of osteopathic examiners without so being, or who shall sign, or subscribe, or issue, or cause to be issued, or seal, or cause to be sealed, a certificate authorizing any person to practice osteopathy or osteopathy and surgery in this state, shall be guilty of a misdemeanor. [L. '19, p. 16, § 16.]

§ 10069. Licenses Under Pre-existing Laws or from Other States.

Any person who holds a license authorizing him to practice osteopathy from a board of medical examiners heretofore existing, under the provision of any laws of this state, past or present, shall be entitled to practice osteopathy in this state the same as if issued under this act, and any person, who shall have been examined and licensed to practice osteopathy by a state board of osteopathic examiners of another state or the duly constituted authorities of another state authorized to issue licenses to practice osteopathy upon examination, shall be entitled to receive a license to practice osteopathy in this state upon the payment of a fee of twenty-five dollars (\$25) to the state treasurer and filing a copy of his license in such other state, duly certified by the authorities granting the license to be a full, true and correct copy thereof, and certifying also that the standard of requirements adopted by such authorities as provided by the law of such state is equal to that provided for by the provisions of this act: Provided, that no license shall issue without examination to any person who has previously failed in an examination held in this state: Provided, further, that all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this act: Provided, further, that the term osteopathy, as used in this act, shall be held to be the practice and procedure as taught and recognized by the regular colleges of osteopathy: Provided, further, that no one shall be permitted to practice surgery who has not a license therefor. [L. '21, p. 224, § 1; L. '19, p. 16, § 17.]

§ 10070. Subject to Health Regulations.

All persons granted licenses or certificates under this act shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [L. '19, p. 17, § 18.]

Osteopath as a physician within meaning of statute in relation to vital statistics.
8 A. L. R. 1070.

§ 10071. Persons Exempt from Provisions of Act.

Nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies, or the practice of midwifery; nor shall this act apply to any commissioned medical officer in the United States army, navy, or marine hospital

service, in the discharge of his official duties; nor to any licensed dentist when engaged exclusively in the practice of dentistry; nor shall this act apply to any practitioner from any other state or territory in which he resides. Provided, that such practitioner shall not open an office or appoint a place of meeting patients or receive calls within the limits of this state.

• This act shall not be construed to apply in any manner to any other system or method of treating the sick or afflicted or to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer. [L. '19, p. 17, § 19.]

§ 10072. Advertising Matter to Carry Word "Osteopathic."

On all cards, signs, letter-heads, envelopes and bill-heads used by those licensed by this act to practice osteopathy or osteopathy and surgery the word "osteopathic" shall always immediately precede the word "physician" and if the word "surgeon" is used in connection with said name, the word "osteopathic" shall also immediately precede said word "surgeon." [L. '19, p. 17, § 20.]

§ 10073. Interchangeable Terms.

The words "certificates" and "licenses" shall be known as interchangeable terms in this act. [L. '19, p. 18, § 21.]

CHAPTER VI.

CHIROPODY.

§ 10074. Chiropody Defined.

For the purpose of this act the practice of chiropody is defined to be the surgical, mechanical and medical treatment of bunions, corns, abnormal nails, warts, callouses and all superficial excrescences; but shall not include surgical operations upon the feet for congenital or acquired deformities or conditions, requiring the use of anaesthetics other than local, nor shall it include amputations. [L. '21, p. 380, § 1; L. '17, p. 186, § 1.]

§ 10075. License Required.

From and after sixty days from the taking effect of this act it shall be unlawful for any person to practice chiropody in this state without having first obtained a license so to do as in this act provided, and without having recorded such license in the office of the county clerk of the county where the licensee shall reside or practice his profession, and without having his said license on exhibition in a conspicuous place in his office or place of business. [L. '17, p. 187, § 2.]

§ 10076. License of Existing Practitioners—Application Fee.

Licenses for the practice of chiropody shall be issued by the state board of chiropody without examination to all persons who shall within sixty days from the taking effect of this act have and maintain a fixed place of business with the necessary facilities for the sterilization of instruments, and who shall at the time of making application file with said board an affidavit to the effect that he or she has such fixed place

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of business, and is a resident of the state, and been engaged in the practice of chiropody in this state for at least two years prior to making application; said application to be accompanied by the certificate of two licensed physicians resident at the place of business of the applicant, to the effect that they are acquainted with the applicant and believe him or her to be a person of good moral character. Said applicant shall at the time of making application pay to the said board the sum of ten dollars (\$10). [L. '17, p. 187, § 3.]

See *infra*, § 10854, duties of board devolve upon director of licenses.

See *infra*, § 10893, board of chiropody abolished.

§ 10077. Examination of Applicants.

The state board of chiropody shall as herein provided examine applicants for licenses to practice chiropody and said board shall have the power to make such rules and regulations as may be necessary to properly conduct such examinations, such examinations to relate only to the following subjects: Anatomy, physiology, pathology, bacteriology, chemistry, therapeutics, clinical chiropody, asepsis, diagnosis and treatment. Not less than ten questions on each subject may be given, and all such examinations shall be conducted in the English language written, oral and clinical. The board shall make and preserve a complete record of all its transactions. [L. '21, p. 380, § 2; L. '17, p. 187, § 4.]

See notes to § 10076.

§ 10078. Record of Licensees.

The secretary of the state board of chiropody shall keep in a book kept for that purpose, a record showing the name, age, place of residence, the time spent in the study and practice of chiropody, the time spent in schools of chiropody, and the date of graduation therefrom and the degree if any, and the date and number of the license issued to such applicant, and whether the same was issued upon or without examination; and the copy of such record certified by the secretary of said board shall be prima facie evidence of the facts therein stated in all courts and all actions and proceedings where proof of such facts is competent. [L. '17, p. 188, § 5.]

See notes to § 10076.

§ 10079. Application for License.

Before any person shall be permitted to take an examination for the issuance of a license under the provisions of this act he or she shall file an application on a form to be prepared and furnished by the state board of chiropody, signed and verified by the applicant, showing that he or she is more than twenty-one years of age, and has obtained a preliminary education which is equivalent to a four years' instruction in a high school or its equivalent, and such applicant must be a graduate with at least two years' attendance of a legally incorporated and recognized school of chiropody, and shall file a certificate signed by two licensed physicians of this state to the effect that they are acquainted with the applicant and believe him or her to be a person of good moral character. All licenses issued under the provisions of this act, whether with or without exam-

ination, shall be identical in form, and shall be numbered and recorded in the book kept for that purpose by the secretary of the state board of chiropody, and shall be signed by the president of said board, and attested by the secretary under the official seal of the board. [L. '21, p. 381, § 3; L. '17, p. 188, § 6.]

See notes to § 10076.

§ 10080. Re-examinations.

An applicant who fails to pass an examination satisfactory to the board, and is therefore refused registration, shall be entitled, at the expiration of six months from the date of the examination at which he failed, to a re-examination at a meeting of the board called for the examination of applicants, upon the payment of a fee of fifteen dollars (\$15) for each such re-examination. [L. '21, p. 381, § 4; L. '17, p. 188, § 7.]

See notes to § 10076.

§ 10081. Minimum Requirement.

The minimum requirement for registration of applicants under this act shall be based upon a general average of seventy-five per cent of all the subjects involved taken collectively, and not less than fifty per cent in any one subject. [L. '17, p. 189, § 8.]

§ 10082. License Fee.

Every applicant for a license to practice chiropody shall pay to the secretary of the state board of chiropody, for the use of the state, the sum of thirty-five dollars (\$35) and a renewal for each year of three dollars (\$3). [L. '21, p. 382, § 5; L. '17, p. 189, § 9.]

See notes to § 10076.

§ 10083. Evidence of Practice of Chiropody.

It shall be deemed prima facie evidence of the practice of chiropody or as holding himself out as a practitioner of chiropody within the meaning of this act for any person to treat in any manner the human foot by medical, surgical or mechanical means or appliances, or to use the title "chiropodist" or any other words or letters which designate or tend to designate to the public that the person so treating or holding himself out to treat, is a chiropodist. [L. '21, p. 382, § 6; L. '17 p. 189, § 10.]

§ 10084. License to be Filed With County Clerk.

It shall be the duty of everyone licensed to practice chiropody under the provisions of this act, to file his license and have the same recorded in the office of the county clerk in the county where the licensee resides or practices his profession, and the absence of such record in any county where such person shall practice or attempt to practice chiropody, shall be prima facie proof of the fact that such person is not licensed to practice chiropody; and it shall be unlawful for any person to practice or attempt to practice chiropody in any county without having first had his license recorded in said county as herein provided. [L. '17, p. 189, § 11.]

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§ 10085. Clerk's Record.

It shall be the duty of the county clerk of each county to record in a book kept for that purpose, licenses issued under the provisions of this act and filed for record in his office, and to collect for such license so recorded a fee of one dollar (\$1), and to, at any time upon request of the state board of chiropody certify to the board a list of all licenses so recorded in his office giving the number of each license and the name of the licensee together with such other information as the board may require. [L. '17, p. 189, § 12.]

§ 10086. Revocation of License.

The state board of chiropody may revoke any license under the provisions of this act upon proof being made that the holder of such license has been convicted of a violation of any of the provisions of this act, or of the commission of any crime involving moral turpitude, or that the license was procured by fraud or deceit practiced upon the board either in the presentation of any false statement as to the qualifications of the applicant or in the examination of the applicant, or for unprofessional conduct or inefficiency in the practice of his profession by the licensee; and unprofessional conduct shall include the employment of persons to solicit business for the licensee, the obtaining of any fee by fraud or misrepresentation, the willful betrayal of professional secrets, the employment directly or indirectly of any student or unlicensed chiropodist to perform operations of any kind except dressing following an operation, advertising by means tending to deceive the public, or being habitually intemperate or grossly immoral. Before any license shall be revoked the licensee shall be furnished with a copy of the complaint or the charges against him, and be given a hearing before the state board of chiropody, and may be represented by legal counsel. [L. '17, p. 190, § 13.]

See notes to § 10076.

§ 10087. Record of Refusals and Revocations—Notice to County Clerk.

In case the state board of chiropody shall refuse to grant a license upon application being made therefor under the provisions of this act, or in case the board shall revoke any license issued under the provisions of this act, the secretary of the board shall make and file in the records of this [his] office a concise statement of the grounds and reasons for such refusal or revocation, which statement together with the decision of the board in writing and signed by the president of the board shall remain a permanent record, and upon the revocation of any license as herein provided the secretary of the board shall notify the clerk of the county where such license is recorded of the fact of such revocation, and the clerk shall thereupon cancel the record in his office and note the fact that such license has been revoked. [L. '17, p. 190, § 14.]

See notes to § 10076.

§ 10088. Appeals to Superior Court.

Any person feeling himself aggrieved by the order of the state board of chiropody in refusing to grant him a license or in revoking his license

shall have the right to appeal to the superior court of the county where the meeting of the board was held at which the order refusing to grant a license, or revoking a license was entered. [L. '17, p. 191, § 15.]

See notes to § 10076.

§ 10089. Use of Title "Doctor."

It shall be unlawful for any persons licensed to practice chiropody under the provisions of this act to use, advertise or display the title "doctor" or its synonyms independent of the title "chiropodist" or its synonyms, and it shall be unlawful for any person to exhibit as his own any license that has not been issued to him. [L. '17, p. 191, § 16.]

§ 10090. Office Requirements.

Every person practicing chiropody in this state shall maintain an office for the treatment of patients, which office shall be kept in a clean and sanitary condition and equipped with the proper facilities for sterilizing all instruments, and no instrument of any kind shall be used on any person before it has been thoroughly sterilized. [L. '21, p. 382, § 7; L. '17, p. 191, § 17.]

§ 10091. Physicians and Surgeons not Affected.

Nothing in this act contained shall be construed as preventing any licensed physician, surgeon, osteopath or other person licensed to treat the sick and afflicted, from treating the hands or feet by the methods and means permitted by his license, nor to prevent the domestic administration of family remedies, nor shall this act be construed to discriminate against any particular school of medicine or surgery or osteopathy and surgery, or any licensed system or mode of treating the sick or afflicted, or to interfere in any way with the practice of religion: Provided, that nothing herein shall be held to apply to or to regulate any kind of treatment by prayer. [L. '17, p. 191, § 18.]

§ 10092. Partial Invalidity.

If any provision of this act shall be held void or unconstitutional, all other provisions and all other sections of the act which are not expressly held to be void or unconstitutional shall continue in full force and effect. [L. '17, p. 191, § 19.]

§ 10093. State Board of Chiropody—Appointment—Meetings.

Within thirty days after the taking effect of this act there shall be appointed by the governor a state board of chiropody consisting of three chiropodists in active practice within the state of Washington for at least two years, whose duties shall be as prescribed in the preceding sections of this act. Said board shall be appointed for a term of four years without salary, but shall be paid their actual traveling expenses when engaged in the work as herein provided, upon proper vouchers approved by the state auditor. All sums paid for licenses and examinations shall be paid into the state treasury in a separate fund and shall be paid out only upon warrants drawn by the state auditor, but in no case shall the amounts paid exceed the amounts obtained for licenses and examinations.

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Said board shall meet on the eighteenth day of July, 1917, and organize by electing a president and secretary, each of whom shall hold his office for four years, vacancies to be filled in the usual manner, and thereafter said board shall meet once every six months alternately at Seattle, Spokane and Tacoma for the purpose of holding examinations as herein provided, the time and place of said examinations to be given applicants by mail. The headquarters of said board shall be the place of residence of the secretary and each officer shall take the oath prescribed by law for public officers. [L. '17, p. 192, § 20.]

See notes to § 10076.

§ 10094. Violations of Act.

Every person violating or failing to comply with the provisions of this act shall be guilty of a misdemeanor and punished accordingly. [L. '17, p. 192, § 21.]

§ 10095. Suspension of Certificate for Misconduct.

The board may suspend any certificate granted under this act for a period not exceeding six months, on account of misconduct on the part of the person registered which would not in the judgment of the board justify the revocation of his or her certificate. [L. '21, p. 382, § 8.]

See notes to § 10076.

§ 10096. Renewal of Lapsed License.

Any license provided for in this act that has been allowed to lapse may be renewed by presentation of a new character certificate as required for examination, together with the payment of the annual license fee. [L. '21, p. 383, § 9.]

§ 10097. Applicants of Other States.

Applicants registered or certified by examiners of other states where requirements are equal to those of this state may, upon the payment of a fee of thirty-five dollars (\$35), be granted a certificate without examination: Provided, however, that the provisions of this section shall be extended only to those states which extend to this state the same privilege. [L. '21, p. 383, § 10.]

CHAPTER VII.

CHIROPRACTIC PRACTICE.

§ 10098. Powers and Duties of Board—Record of Proceedings.

. . . . (c) Said board [of chiropractic examiners] shall have authority to administer oaths, take affidavits, summon witnesses and take testimony as to matters pertaining to their duties. They shall adopt a seal, which shall be affixed to all licenses issued by them and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, which shall be without prejudice, partiality or discrimination as to the different schools of chiropractic. The secretary of said board shall at all times keep a record of the proceedings

of the board which shall at all times be open to public inspection. Said board shall also keep on file with the secretary of state a copy of their rules and regulations for public inspection, and shall elect annually a president, vice-president, and a secretary-treasurer. A majority of the board shall constitute a quorum.

(d) No professor or person financially interested in any chiropractic school or college shall be a member of said board.

(e) A license to practice chiropractic within this state shall be issued to the individual members of said board at the first meeting of said board upon the payment of the regular fee as provided for in this act. [L. '19, p. 19, § 3.]

See *infra*, § 10854, duties devolve upon director of licenses.

See *infra*, § 10893, board of chiropractic examiners abolished.

Validity of special regulation of chiropractic treatment of disease. *Ann. Cas.* 1917B, 798.

§ 10099. Practicing Without License.

It shall be unlawful for any person to practice chiropractic in this state, unless they shall have obtained a license as provided in this act: Provided, however, that nothing in this act shall apply to or affect any persons who are now actually engaged in the practice of such profession, except as hereinafter provided. [L. '19, p. 20, § 4. Cf. L. '17, p. 187, § 2.]

§ 10100. Application for Licenses—Qualifications—Fees.

(a) Any person wishing the right to practice chiropractic in this state, before it shall be lawful for him to do so, shall make application to the said board of chiropractic examiners through the secretary-treasurer thereon [thereof], upon such form thereof and in such manner as may be adopted and directed by the board at least fifteen (15) days prior to any meeting of said board. Each applicant shall be a graduate of a chartered chiropractic school or college which teaches a course of two years of nine months each or more, or its equivalent, requiring actual attendance in same. Applications shall be in writing and shall be signed by the applicant in his own handwriting and shall be sworn to before some officer authorized to administer oath[s], and shall recite the history of the applicant as to his educational advantages, his experience in matters pertaining to a knowledge of the care of the sick, how long he has studied chiropractic, under what teachers, what collateral branches, if any, he has studied, the length of time he has engaged in clinical practice; accompanying the same by reference therein, with any proof thereof in the shape of diplomas, certificates, and shall accompany said application with satisfactory evidence of good character and reputation.

(b) There shall be paid to the secretary-treasurer of the state board of chiropractic examiners by each applicant for a license, a fee of twenty-five dollars, ten dollars of which shall accompany application and the remainder, fifteen dollars, shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application. [L. '19, p. '20, § 5.]

Part of this section omitted as superseded. See notes to § 10098.

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§ 10101. Examinations—Subjects for Examination.

Examinations for license to practice chiropractic shall be made by said board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of his or her name, so that the identity [shall] not be discovered or disclosed to the members of the board until after the examination papers are graded.

(b) All examinations shall be made in writing, the subject of which shall be as follows: Anatomy, physiology, hygiene, symptomatology, nerve-tracing, chiropractic-orthopedy, principles of chiropractic and adjusting, as taught by chiropractic schools and colleges. A license shall be granted to all applicants who shall correctly answer seventy-five per centum (75%) of all questions asked, and if any applicant shall fail to answer correctly sixty per centum (60%) of the questions on any branch of said examination, he or she shall not be entitled to a license.

(c) Any chiropractor who has complied with the provisions of this act may adjust by hand any articulation of the spine, but shall not prescribe for or administer to any person any medicine or drugs now or hereafter included in materia medica, nor practice obstetrics, nor practice osteopathy or surgery. [L. '19, p. 21, § 6. Cf. L. '17, p. 187, § 4.]

See notes to § 10098.

§ 10102. Examinations Dispensed With, When.

All chiropractors practicing within this state six (6) months prior to the passage of this act and who shall be a graduate of a chartered school or college of chiropractic requiring actual attendance in the same, during his course, shall be granted a license as herein provided, without examination, provided that application be made within sixty (60) days after the taking effect of this act and accompanied by the required fee, as herein provided. [L. '19, p. 22, § 7.]

§ 10103. Revocation and Refusal of Licenses—Restoration of Right.

(a) The state board of chiropractic examiners may refuse to grant or may revoke a license to practice chiropractic in this state or may cause a licentiate's name to be removed from the records in the office of the county clerk of any county in this state upon any of the following grounds, to-wit: The employment of fraud or deception in applying for a license or in passing an examination provided for in this act; the practice of chiropractic under a false or assumed name, or the impersonation of another practitioner of like or different name; the conviction of a crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate him or her for the performance of their professional duties, exploiting or advertising through the press, or by the use of handbills, circulars or other periodicals, other than professional cards, giving only name, address, profession, office hours and telephone connections. Any person who is a licentiate, or who is an applicant for a license to practice chiropractic against whom any of the foregoing grounds for revoking or refusing a license, is presented to said board with a view of having the board re-

voke or refuse to grant a license, shall be furnished with a copy of the complaint, and shall have a hearing before said board in person or by attorney, and witnesses may be examined by said board respecting the guilt or innocence of said accused.

(b) Said board may at any time within two years of the refusal or revocation or cancellation of registration under this section, by a majority vote, issue a new license or grant a license to the person affected, restoring him to, or conferring upon him all rights and privileges of, and pertaining to the practice of chiropractic as defined and regulated by this act. Any person to whom such have been resotred [restored] shall pay to the secretary-treasurer the sum of twenty-five dollars upon issuance of a new license. [L. '19, p. 22, § 8. Cf. L. '17, p. 190, § 13.]

See notes to § 10098.

§ 10104. Recordation of Licenses—Cancellation for Failure to Record.

(a) Every person who shall receive a license from the state board of chiropractic examiners shall have it recorded in the office of the county clerk of the county in which he resides and shall likewise have it recorded in the counties to which he shall subsequently remove for the purpose of practicing chiropractic.

(b) The failure or refusal on the part of the holder of a license to have it recorded before he or she shall begin the practice of chiropractic in this state after having been notified by the state board of chiropractic examiners to do so, shall be sufficient grounds to revoke or cancel a license and render it null and void. The county clerk shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When any such licenses shall be presented to him for record, he shall stamp upon the face thereof his signed memorandum of the date when such license was presented for record. [L. '19, p. 23, § 9.]

See notes to § 10098.

§ 10105. Annual License Fee—Notice to Practitioners.

All persons practicing chiropractic within this state shall pay on or before the first day of September of each year, after a license is issued to them as herein provided, to said board of chiropractic examiners a renewal license fee of five (\$5) dollars. The secretary-treasurer shall, thirty (30) days or more before September 1st, of each year mail to all chiropractors in this state a notice of the fact that the renewal fee will be due on or before the first of September. Nothing in this act shall be construed so as to require that the receipts shall be recorded as original licenses are required to be recorded. [L. '19, p. 24, § 10.]

See notes to § 10098.

§ 10106. Disposition of Fees—Annual Fiscal Reports.

(a) All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall on or before the tenth (10) day of the succeeding month deposit the same with the state treasurer, together with

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a verified statement showing the sources from which the money was derived.

(b) The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year he shall file with the governor of this state a report of all receipts and disbursements, and the proceedings of said board for the fiscal year.

(c) The members of said board shall receive a per diem of five (\$5) dollars for each day during which they shall be actually engaged in the discharge of their duties in attendance upon the meetings of the board and in going to and returning from the place of meeting, and all necessary expenses incurred in attendance of such meetings.

(d) All such compensation and expenses, and all other expenses incident to the execution of the provisions of this act, shall be paid by warrants drawn by the state auditor upon the presentation of vouchers to be approved by a majority of the board, as in the case of state officers. [L. '19, p. 24, § 11.]

See notes to § 10098.

§ 10107. Practitioners Subject to Health Regulations.

Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death certificates and any and all matters pertaining to public health, reporting to the proper health officers the same as other practitioners. [L. '19, p. 25, § 12.]

§ 10108. Licensing Practitioners from Other States.

Persons licensed to practice chiropractic under the laws of any other state having equal requirements of this act, may, in the discretion of the board, be issued a license to practice in this state without examination, upon payment of the fee of twenty-five (\$25) dollars as herein provided. [L. '19, p. 25, § 14.]

§ 10109. Illegally Practicing—Penalty.

Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title chiropractor, D. C. Ph. C., or any word or title to induce belief that he is engaged in the practice of chiropractic without first complying with the provisions of this act, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in said certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony. All subsequent offenses shall be punished in like manner. Nothing herein shall be held to apply or to regulate any kind of treatment by prayer: Provided, that on all cards, books, papers, signs or other written or printed means of giving information to the public, used by those licensed by this act to practice chiropractic, the practitioner shall use after or below his name the term chiropractor

or D. C. Ph. C. designating his line of drugless practice, and shall not use the word "doctor," abbreviation "Dr." or the letters M. D. or D. O. [L. '19, p. 25, § 15. Cf. L. '17, p. 192, § 21.]

§ 10110. Prosecutions for Violations of Act.

It shall be the duty of the several prosecuting attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this act. It shall be the duty of the secretary-treasurer of said board, under the direction of said board, to aid said attorneys of this state in the enforcement of this act. [L. '19, p. 26, § 16.]

§ 10111. Repealing Clause.

All acts and parts of acts in conflict herewith are hereby repealed. [L. '19, p. 26, § 17.]

CHAPTER VIII.

DRUGLESS HEALING.

§ 10112. Examinations—Secretary's Records.

. . . . It [The board] shall hold examinations alternately at Spokane and Seattle, Washington, said examinations to begin at 9 o'clock A. M. on the first Monday of February and August of each year. Examinations to continue at least one (1) day and until all applications are properly disposed of. The secretary shall keep a record of all proceedings, including the register of applicants for licenses, giving their age, a description of their education in drugless therapeutics, and results of examinations. Said record shall be prima facie evidence of the matters therein contained. [L. '19, p. 64, § 1.]

Part of this section omitted as superseded.

See infra, § 10854, duties of drugless examiners devolve upon director of licenses.

See infra, § 10893, board of drugless examiners abolished.

Cited in 113 Wash. 372.

Board of Drugless Examiners, 113 Wash. 371, 194 Pac. 388.

This act was not intended to draw a distinction between mental healing resulting from suggestions from the practitioner and reasoning: Wells v. State,

Validity of special regulation of drugless treatment of disease. Ann. Cas. 1917B, 798.

§ 10113. License Fee—Qualifications—Examinations—Refusals and Cancellations.

Only persons desiring to practice drugless therapeutics in this state shall apply to said board of examiners for a license and pay a fee of twenty-five dollars (\$25) as hereinafter specified, which sum in no case shall be refunded. If at a time appointed, or at the next regular examination he or she shall prove he or she has completed a residence course of three entire sessions of thirty-six weeks each at a chartered drugless school, the entrance requirements of which was a high school education, or its equivalent and shall pass an examination in the following subjects, to wit: Anatomy, physiology, hygiene, symptomatology, urinalysis, dietetics, hydrotherapy, radiography, electrotherapy, gynecology, obstetrics, psychology, mechanical and manual manipulation, they shall be granted a license by said board, or if the school attendance of said applicant was

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prior to the passage of this act a diploma from a chartered drugless school, the entrance requirements of which was a common school education or its equivalent, and two years continuous practice in this state shall suffice; or if the applicant has no diploma but has been in continuous practice in any of the drugless systems herein mentioned for the past four years, two years of which shall have been in continuous practice in one place in this state, he or she shall be allowed to practice: Provided, said applicant shall take an examination on the following subjects: anatomy, physiology, hygiene, symptomatology, mechanical and manual manipulation. After such examination, the board, if five (5) members consent, shall grant the applicant a license to practice drugless therapeutics in the state of Washington. The examinations shall be both scientific and practical and thoroughly test the fitness of the candidate. All answers to questions peculiar to any school of therapeutics shall be scrutinized and their sufficiency passed upon by the members of the board belonging to such school and their decisions shall be final, but the following subjects, to wit: anatomy, physiology, hygiene, urinalysis and gynecology, shall be construed to be in common with all systems herein mentioned, and each candidate shall be examined in each of said subjects: Provided, after 1921, the following subjects shall be construed as common to all systems, to wit: anatomy, physiology, hygiene, urinalysis, symptomatology, hydrotherapy and gynecology. The board may refuse to grant a license to, or may revoke the license of any person guilty of unprofessional conduct, subject to the right of appeal within ninety (90) days, to the superior court of the county where the board met when said license was refused, or revocation made. Any license granted without a full and fair compliance with the provisions of this act may be canceled in any action brought in the name of the state by the prosecuting attorney of the county where the examination was held, or said action may be brought by the attorney general; and if a license is denied an applicant shall have the right to petition the superior court where said examination was held for an order compelling said board to issue said license.

Continuous practice as herein provided shall be construed to apply to drugless physicians who have actually been practicing in this state, even if they have not received a license under the present medical laws. [L. '19, p. 65, § 3.]

See notes to § 10112.

§ 10114. Forms of Certificates to Practice—Affidavits and Testimonials.

The following forms of certificates shall be issued by said board under the seal thereof, and signed by the president and secretary:

First. A certificate authorizing the holder thereof to practice mechanotherapy;

Second. A certificate authorizing the holder thereof to practice suggestive therapeutics;

Third. A certificate authorizing the holder thereof to practice food science;

Fourth. A certificate authorizing the holder thereof to practice physcultopathy;

Fifth. A certificate for any other separate and co-ordinate system of drugless practice, and such system shall be given two representations on the board: Provided, they shall show evidence of not less than fifty graduates, practicing in this state, whose requirements shall be no less than as set forth in this act. Practitioners hereunder shall confine their practice to the subjects and system or systems represented by their certificate or certificates granted by said board. The applicant for an examination must file at least thirty days prior to a regular meeting satisfactory testimonials of good moral character and a diploma issued by some legally chartered drugless college, or satisfactory evidence of having possessed such diploma, except as herein otherwise provided, and must fill out a blank application to be sworn to before some person authorized to take acknowledgments, showing that he or she is the person named in the diploma, is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation. The said application shall be made on a blank furnished by said board, and shall contain such other information concerning the instruction and preliminary education of the applicant as said board may by rule adopt. [L. '19, p. 67, § 4.]

See notes to § 10112.

§ 10115. Disposition of Moneys Collected—Drugless Practitioner's Fund.

All money received by said board or any member thereof, shall be turned over before the tenth day of the succeeding month to the state treasurer, together with verified statement showing the source from which it was derived. The treasurer of said board shall give a surety bond to be approved by and deposited with the auditor of the state in the sum of one thousand dollars (\$1,000). Each member of the board of examiners shall receive a compensation from said fund of five dollars (\$5) for each day in which he is actually engaged in attendance upon the meetings of the board, in going to and returning from meetings, and all necessary expenses incurred in attending such meetings, all such compensation and premium for treasurer's bond, also postage and printing, shall be paid by the state treasurer from funds accumulated by license fees herein provided for, same to be paid on warrants drawn by the state auditor upon presentation of proper vouchers approved by said board.

All the fees collected under the provisions of this act shall be credited to a fund to be known as "the drugless practitioner's fund," and at the end of each three year period, any amount of money accumulated in said fund over and above the sum of two hundred and fifty dollars (\$250) shall be part of the general fund and shall accordingly be transferred by the state treasurer from said "drugless practitioner's fund" to the general fund. The secretary of said board shall receive a compensation not to exceed one hundred dollars (\$100) per annum. [L. '19, p. 68, § 5.]

See notes to § 10112.

§ 10116. Recordation of Licenses.

Before engaging in practice, the holder shall file his license for record with the county clerk in the county where he resides. Upon removal to another county he shall file his license in like manner. Such clerk shall

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keep in the record book of said licenses an index, showing the date and page record, and on demand shall furnish the secretary of the board a list of licenses on file. Upon notice to the clerk of the death or removal of a licensee, or revocation of a license, he shall note the same upon the records. [L. '19, p. 69, § 6.]

§ 10117. Health and Vital Statistics Regulations.

All persons granted licenses or certificates under this act, shall be subject to the state and municipal regulations, relating to the control of contagious diseases, the reporting and certifying of births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [L. '19, p. 69, § 7.]

§ 10118. Persons Excepted from Provisions of Act.

Nothing in this act shall be construed as to prohibit service in the case of emergency, or the domestic administration of families' remedies, nor shall this act apply to any commissioned health officer in the United States army, navy or marine hospital service, in discharge of his official duties, nor to any licensed dentist when engaged exclusively in the practice of dentistry, nor to any duly licensed physician in the practice of medicine, or surgery, nor to a person duly licensed to practice osteopathy, from using or recommending drugless methods of healing in the course of their practice, nor shall this apply to any practitioner from any other state who visits this state in response to a call to treat a particular patient: Provided, such practitioner shall not open an office or appoint a place of meeting patients within the limits of this state, nor shall this act be construed to discriminate against any particular school of drugless therapeutics or to interfere in any way with the practice of religion: Provided, also that nothing in this act shall be held to apply to, or regulate any kind of treatment by prayer. [L. '19, p. 69, § 8.]

§ 10119. Unprofessional Conduct Defined.

The words "unprofessional conduct" as used in this act is hereby declared to mean:

First. The procuring, aiding or abetting in procuring a criminal abortion.

Second. The willful betraying of a professional secret.

Third. Advertising any means or remedy whereby the monthly periods of women can be regulated, or menses re-established.

Fourth. Conviction of any offense involving moral turpitude.

Fifth. Habitual intemperance.

Sixth. The personation of another licensed practitioner.

Seventh. Exploiting or advertising through the press, or by the use of handbills, circulars or other periodicals, other than professional cards, giving only name, address, profession, office hours and telephone connections.

Eighth. All advertising which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons.

Ninth. Conspiring to bring or cause to be brought any action in court against any licensed practitioner for alleged malpractice or agree with

anyone for a share or part of any sum of money to be recovered in such action: Provided, that nothing herein shall be construed to prevent any licensed practitioner from testifying against any other licensed practitioner in any action for alleged malpractice. [L. '19, p. 70, § 9.]

§ 10120. Illegally Practicing.

Any person not heretofore authorized by law who shall practice or attempt to practice or hold himself out as practicing drugless therapeutics in the state of Washington without having obtained the license herein provided for, contrary to any provisions of this act shall be guilty of a misdemeanor, and shall be punished as provided by law for such offenses. Any person shall be regarded as practicing within the meaning of this act who shall use, prescribe, direct or recommend, any drugless treatment for the relief of any wound, fracture, bodily injury, or disease, either mental or physical: Provided, this act shall not be construed to discriminate against any particular school of drugless therapeutics, or to interfere in any way with the practice of religion: Provided, also, that nothing in this act shall be held to apply to or regulate any kind of treatment by prayer. [L. '19, p. 71, § 10.]

§ 10121. Examination Regulations—Fee—Credits—Conduct of Examinations.

The examination held by the state board of drugless examiners under this act shall be conducted in accordance with the following regulations:

First. Each applicant is required to make an affidavit setting forth his age, place of residence, time and place of each course of lectures, or other work connected with his drugless education and the date of graduation, or length of time in practice. The affidavit must be corroborated by the exhibition of a certificate from the proper officers of the college, showing that the applicant had completed the prescribed course for graduation. No advance standing shall be recognized for work done at other than drugless colleges.

Second. A fee of twenty-five dollars (\$25) must accompany the application. This fee is under no consideration to be returned, but if the applicant should fail to secure an average of sixty-five per cent (65%), and should be denied a license, such applicant shall, without paying a further fee and without losing his classification under the provisions of this act, be permitted to take another examination any time within two years. Drugless practitioners who hold a diploma from a legally incorporated drugless school who have practiced in this state two years previous to the passing of this act and those having no diploma but who have been in continuous practice in this state for three years, shall be given a credit of fifteen per cent (15%) on the general average.

Third. The examination shall be in charge of three or more of the members of the board of examiners, and the papers of candidates shall be known by numbers which shall be arranged as follows: envelopes shall be numbered and each containing a blank corresponding to the number, on which blank the applicant shall write his name and address, and return to the envelope, sealed by the applicant, and delivered to the

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examiners. Each candidate shall place on his paper the number given him and the year of graduation.

Fourth. Examination papers will be collected, and sent to the member or members of the board in charge of that subject. Such member or members shall examine the papers and place the mark opposite each candidate's number. These marks shall be sent to the secretary, who shall tabulate them and present them to the members of the board at a meeting which shall be held at the time of the examination or within thirty days thereafter. When the markings are completed, the envelopes containing the names are to be opened and the names placed, opposite their respective numbers.

Fifth. No dishonest methods will be tolerated, and any candidate disregarding these rules shall be debarred from further examination.

Sixth. Each subject for examination shall be covered by ten questions, and two hours' time shall be allowed for each subject. All of the questions given on the subjects of anatomy, physiology and hygiene must be approved by five members of said board, and all of the questions on the other subjects mentioned in common in this law shall be approved by at least four members of the entire board.

Seventh. No candidate shall be allowed to leave the examination room after the question papers have been distributed, until the questions are answered and delivered to the examiners in charge.

Eighth. All examinations shall be in English. Within twenty days after a license is granted or refused, the reasons shall be set forth in writing and placed with the papers used in the examination, and all of said examination papers shall be filed with the secretary of the board within thirty days after said license has been granted or refused. [L. '19, p. 71, § 11.]

See notes to § 10112.

§ 10122. Definitions.

The term "separate and co-ordinate system" as used in this act is defined as follows:

Food Science: Is the science of treating disease through the chemical action of foods, water, nonmedicinal herbs, roots, barks and all natural food elements other than pharmaceutic drugs and poisons, to bring about a normal condition of health.

Mechano-Therapy: Is a system of therapeutics which enables the practitioner to know how to apply scientifically the mechanics of hydrotherapy, dietetics, circumstances, idea and manual manipulation for the stimulation of phycho and physiological action to establish a normal condition of the body.

Suggestive Therapeutics. Is a system of healing which enables the practitioner to know how to offer suggestions that will cause the mind of the patient to overcome the disease of the body and bringing mind and body into harmony, and both into harmony with environment.

Physcultopathy. Is a system of healing which enables the practitioner to know the scientific effect of movements on the body and how to

direct a system of mechanical gymnastics that restore the diseased parts or functions to a normal condition. [L. '19, p. 73, § 12.]

Cited in 113 Wash. 372.

§ 10123. Drugless Therapeutics Defined.

The term "drugless therapeutics," as used in this act consists of hydrotherapy, dietetics, electro-therapy, radiography, sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body, but shall in no way include the giving, prescribing or recommending of pharmaceutic drugs and poisons for internal use, the purpose of this act being to confine practitioners hereunder to drugless therapeutics.

The words "certificate" and "license" shall be known as interchangeable terms. [L. '19, p. 74, § 13.]

§ 10124. Advertising Matter.

On all cards, books, papers, signs, or other written or printed means of giving information to the public on any system of practice, the practitioner shall use after or below his name the proper term designating the special line of drugless practice in which he is engaged, and shall not use after his name the letters, "M. D." or Doctor of Medicine and Surgery, nor "D. O." or Doctor of Osteopathy, or "D. C." or Doctor of Chiropractic. [L. '19, p. 74, § 14.]

§ 10125. Penalty for Violations of Act.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall be punished as provided by law. [L. '19, p. 75, § 17.]

CHAPTER IX.

PHARMACY.

§ 10126. [8445.] Pharmacists to be Registered.

It shall hereafter be unlawful for any person to compound or dispense drugs, medicines or poisons, or to institute any pharmacy, store or shop for wholesaling or retailing, compounding or dispensing drugs, medicines or poisons, unless such person shall be a registered pharmacist or shall place in charge of said pharmacy store or shop a registered pharmacist except as hereinafter provided. [L. '99, p. 216, § 1.]

For former laws, see L. '91, pp. 372—377; 1 H. C., §§ 2864—2879; L. '93, p. 272; Bal. Code, §§ 3034—3049; all repealed by L. '99, p. 224, § 18.

Cited in 96 Wash. 432.

Under this section an ordinance requiring druggist to obtain a license is unconstitutional where it vests an arbitrary discretion in the license committee of the council to grant or withhold license:

Seattle v. Gibson, 96 Wash. 425, 165 Pac. 109.

Validity of statutory regulation of druggists or pharmacists. 10 Ann. Cas. 399.

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§ 10127. [8446.] Qualifications for Registration.

In order to be a registered pharmacist, all persons must be either graduated in pharmacy, licentiates in pharmacy, assistant pharmacists or licensed physicians. [L. '99, p. 216, § 2.]

§ 10128. [8447.] Graduate Pharmacists.

Graduates in pharmacy shall be such persons as have obtained a diploma from such college or school of pharmacy as be approved by the state board of pharmacy, as sufficient guaranty of their attainments and proficiency. [L. '99, p. 217, § 3.]

§ 10129. [8448.] Licentiates in Pharmacy.

Licentiates in pharmacy shall be such persons, not less than twenty-one years of age, as shall have had three years' practical experience in drug stores where prescriptions of medical practitioners are compounded, together with such preliminary education as may be designated by the said board, and have passed a satisfactory examination. The state board of pharmacy may grant certificates of registration to licentiates of such other state boards as it may deem proper without examination. [L. '99, p. 217, § 4; L. '09, p. 727, § 1.]

See *infra*, §§ 10854, 10862, duties of state board of pharmacy devolve upon director of licenses.

See *infra*, § 10893, state board of pharmacy abolished.

Cited in 110 Wash. 71.

§ 10130. [8449.] Assistant Pharmacists.

Assistant pharmacists shall be such persons not less than eighteen years of age as have had two years' practical experience under a registered pharmacist, together with such preliminary education as may be designated by the state board of pharmacy, the time of attendance at any reputable school of pharmacy to be accredited to such time, and who shall have passed a satisfactory examination before the state board of pharmacy. Persons who have passed a similar examination before any other state board of pharmacy, upon furnishing satisfactory proof thereof, may receive a certificate of registration as assistant pharmacist without further examination, at the discretion of the state board. The holder of a certificate of registration as assistant pharmacist shall be deemed competent to act as clerk or salesman in a drug store or pharmacy under the supervision of a registered pharmacist in charge thereof, and during the temporary absence of said registered pharmacist. [L. '99, p. 217, § 5; L. '09, p. 727, § 2.]

See notes to § 10129.

§ 10131. [8450.] Registry of Apprentices.

It shall be the duty of registered pharmacists who take into their employ an apprentice for the purpose of becoming a registered pharmacist to report to the board within three months thereafter such facts regarding his or her schooling and preliminary qualifications as the board may require for the purpose of registration, and to satisfy himself that such apprentice does possess those qualifications demanded by the board. The board shall furnish proper blanks for this purpose, and may

issue to such apprentice a certificate of registration as a registered apprentice, and the date of the certificate shall be proof of the time when practical experience began with the apprentice named therein; and the fee for such registration shall be one dollar. Every registered pharmacist shall report to the state board of pharmacy the names of all clerks and apprentices employed in their respective pharmacy at least once during each year, and at such time as the state board of pharmacy shall determine. [L. '99, p. 217, § 6; L. '09, p. 728, § 3.]

See notes to § 10129.

§ 10133. [8452.] Board — Officers — Powers and Duties — Meetings — By-laws.

The state board of pharmacy shall annually elect a president and a secretary from the number of its own members, who shall be elected for the term of one year, and shall perform the duties prescribed by the board.

It shall be the duty of the board to examine all applicants for registration, submitting application in proper form; to grant certificates of registration to such persons as may be entitled to the same under the provisions of this act; to cause prosecutions of all persons violating the provisions of this act; to report annually to the governor and to the Washington state pharmaceutical association upon the condition of pharmacy in the state, which said report shall furnish a record of the proceedings of said board for the year, as well as the names of all persons registered under this act; and also an itemized account of all moneys received and disbursed by them as said board, which account shall be audited by the Washington state pharmaceutical association annually.

The board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties at least once in six months: Provided, that the president of the board of pharmacy may call special meetings of said board not more than twice in any one year for the purpose of transacting such business as may properly come before it, and said board shall give thirty days' public notice of the time and place of all of its meetings.

The said board shall have power to make such by-laws, rules and regulations, not inconsistent with the laws of the state, as may be necessary to carry into effect the provisions of this act.

The board shall have power to investigate all alleged violations of the provisions of this act, or any other law of this state regulating the dispensing or sale of drugs, medicines or poisons, or the practice of pharmacy, which may come to its notice, and whenever there appears reasonable cause therefor to take and hear testimony with reference to the same.

The board shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this act, together with a record of the conditions justifying such registration. Three members of said board shall constitute a quorum for the

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transaction of all business that may properly come before the board.
[L. '99, p. 218, § 8; L. '09, p. 728, § 4.]

See notes to § 10129.

"Act" in this and other sections refers to this chapter.

Cited in 96 Wash. 432.

§ 10134. [8453.] Who Entitled to Registration.

All persons hitherto registered, either as pharmacists, assistant pharmacists or physicians, under the laws of this state, shall be entitled to all rights and privileges of registration under this chapter: Provided, that physicians to be entitled to the benefits of this chapter must make application for registration hereunder within thirty days of the taking effect of this act. [L. '99, p. 219, § 9.]

§ 10135. [8454.] Registration Fee—Shopkeeper's License.

Every person claiming registration as a graduate in pharmacy or as a licentiate of some other state board, shall, before a certificate be granted, pay the secretary of the state board of pharmacy the sum of eight dollars, and every applicant for registration by examination under this chapter shall pay the secretary the sum of ten dollars before the examination be attempted: Provided, that in case the applicant fails to pass a satisfactory examination he shall have the privilege of a second examination without any charge any time within one year.

Every shopkeeper not a pharmacist, desiring to secure the benefits and privileges of this chapter, is hereby required to secure a shopkeeper's license, and he or she shall pay the sum of six dollars for the same, and annually thereafter the sum of six dollars for renewal of same. [L. '99, p. 219, § 10; L. '09, p. 730, § 5.]

§ 10136. [8455.] Annual Renewal of Registration—Fee—Certificate to be Displayed.

Every registered pharmacist and assistant pharmacist who desires to continue the practice of his profession shall annually on or before the first day of June of each year pay to the secretary of said board a renewal registration fee, the amount of which shall be fixed by the board, and which in no case shall exceed two dollars for a pharmacist and one dollar for an assistant, in return for which payment he shall receive the renewal of such registration. Every certificate of registration and every renewal shall be conspicuously exposed in the pharmacy or shop to which it applies. Any registered pharmacist, assistant pharmacist or shopkeeper who shall fail or neglect to conspicuously expose such certificates as are herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than ten dollars, and the costs of the action. [L. '99, p. 220, § 11.]

See notes to § 10129.

§ 10137. [8456.] Compensation of Board—Bond by Secretary.

Each member of the state board of pharmacy shall receive a compensation of five dollars a day for each day in which he is actually and necessarily engaged in attendance upon meetings of the board and in

going to and returning from the place of meeting, and all necessary expenses incurred in attending such meeting; all such compensation and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor, upon the presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers.

The secretary of said board shall receive a compensation to be determined by said board not to exceed one hundred dollars per annum.

All money received or collected by said board or any member or officer thereof during any month shall be turned over before the tenth day of the succeeding month, to the state treasurer together with a verified statement showing the sources from which such money was derived. The secretary of said board shall give a surety bond to be approved by and deposited with the auditor of the state, in the sum of one thousand (\$1,000) dollars. The cost of said bond shall be paid by the state. [L. '13, p. 257, § 1. Cf. L. '99, p. 220, § 12; L. '09, p. 730, § 6.]

See notes to § 10129.

§ 10138. [8457.] Penalties for Violations—Exceptions.

Any person not a registered pharmacist and not having in his employ a registered pharmacist within the full meaning of this chapter, who shall retail, compound or dispense medicines, or who shall take, use or exhibit the title of registered pharmacist, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed fifty dollars.

Every place in which physicians' prescriptions are compounded shall be deemed to be a pharmacy, or a drug store, and the same shall be under the personal supervision of a licensed pharmacist.

Any person who shall permit the compounding and dispensing of prescriptions, or vending of drugs, medicines or poisons in his store or place of business, except under the supervision of a registered pharmacist, or any registered pharmacist or shopkeeper registered under this chapter while continuing in business, who shall fail or neglect to procure annually his renewal of registration, or any person who shall willfully make any false representations to procure registration for himself or any other person, or who shall violate any of the provisions of this chapter willfully and knowingly, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed fifty dollars: Provided, that nothing in this chapter shall operate in any manner to interfere with the business of any physician in regular practice, or prevent him from supplying to his patients such medicines as he may deem proper, nor with the making or selling proprietary medicine or medicines placed in sealed packages, nor with the exclusive wholesale business of any dealer except as hereinafter provided, nor prevent shopkeepers from dealing in and selling the commonly used medicines, or patent and proprietary medicines, if such medicines are sold in the original packages of the manufacturer, or in packages put up by a registered pharmacist in the manner provided by the state board of pharmacy; such shop-

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keeper shall have obtained a license as hereinafter provided. [L. '99, p. 220, § 13; L. '09, p. 730, § 7.]

Cited in 99 Wash. 450.

§ 10139. [8458.] Adulteration—Penalty.

Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, willfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by the pharmacopoeia of the United States or used or intended to be used in medical practice, or shall willfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of any of the provisions of this section may suffer both fine and imprisonment. In any case he shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated. [L. '99, p. 222, § 14.]

See supra, §§ 2943, 2944, sale of morphine regulated.

§ 10140. [8459.] Poisons and Liquors—Record of Sales.

The proprietor of every drug store shall keep in his place of business a record in which shall be entered all sales of the compounds and salts of arsenic, baring, chromium, gold, mercury (calomel excepted), silver, the caustic hydrates of sodium, and potassium, the concentrated mineral acids, hydrocyanic acids and their salts, yellow phosphorus, paris green, the essential oils of almonds, pennyroyal, tansy and savin, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds colchicum, cotton root, coccolus indicus, conium, cannabis, indica, digitalis, hyoseyamus, ignatia, lobella, nux vomica, opium, physostigma, phytolacca, strophanthus, stramonium, veratrum viride, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or veratrine or any other poisonous alkaloids or their salts, or any poisonous compound, combination or preparation thereof, also all wines and spirituous or malt liquors. Said record shall state quantity purchased, the date, for what purpose used, buyer's name and address, and said record at all times during business hours shall be subject to the inspection of the prosecuting attorney or any duly authorized agent of the board of pharmacy: Provided, that no such wines, spirituous or malt liquors shall be sold for any other than medicinal, scientific, mechanical or sacramental purposes, and no other license shall be necessary under any ordinance of any municipality for pharmacists to make said sale in compliance with the provisions of this chapter.

He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous nature and that the said

poison is to be used for a legitimate purpose. [L. '99, p. 222, § 15; L. '09, p. 731, § 8.]

See supra, § 2507, omitting to label drugs.

See supra, § 2508, sale of poisons without label and record.

See supra, § 10126.

Cited in 58 Wash. 25; 96 Wash. 432.

This section, relating to the drug business and authorizing the sale of spirituous liquors by druggists for medical purposes, did not impliedly repeal the act relating to the sale and disposal of intoxicating liquors and requiring sales by druggists for medical purposes to be upon the written prescription of a reputable physician; since repeals by implication are not favored, and this rule has special application where the laws relate to different subjects: *Seattle v. Foster*, 47 Wash. 172, 91 Pac. 642; *State v. Krook*, 58 Wash. 23, 107 Pac. 1032.

This section amending the pharmacy law so as to provide that "no other license shall be necessary under any ordinance of any city" to make sales in intoxicating liquors under the pharmacy act, merely means that the state law shall govern, and was not intended to authorize sales without a state license and physician's prescription: *State v. Krook*, 58 Wash. 23, 107 Pac. 1032.

Construction and effect of statute prohibiting or regulating sale of poisons. 30 L. R. A. (N. S.) 519.

§ 10141. [8460.] Peddler's License.

Any itinerant vendor or any peddler of any medicine, drug, nostrum or ointment or preparation, for the treatment of disease or injury, shall pay a license fee of not less than one dollar nor more than twenty-five dollars per month into the treasury of the board, subject to regulations formulated by said board of pharmacy. It shall be lawful for said board to issue license to such itinerant vendor or peddler on application made to the state board of pharmacy, such license to be signed by the president and attested by the secretary with the seal of the board. And such itinerant vendor or peddler, or who shall vend or sell or offer to sell any such medicine, drug, nostrum or ointment or preparation without having a license so to do as herein provided shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty dollars, and not exceeding fifty dollars for such offense, and each sale, or offer for sale, shall constitute a separate offense. [L. '99, p. 223, § 16.]

See supra, §§ 8341—8358, licenses for peddlers.

§ 10142. [8461.] Duty of Prosecuting Attorney—Fines to School Fund.

All suits for the recovery of the several penalties prescribed in this chapter shall be prosecuted in the name of the state of Washington in any court having jurisdiction, and it shall be the duty of the prosecuting attorney of the county wherein such offense is committed to prosecute all persons violating the provisions of this chapter upon the filing of proper complaint. All penalties collected under the provisions of this chapter shall inure to the school fund of the county in which suit was prosecuted and judgment obtained. [L. '99, p. 224, § 17; L. '09, p. 732, § 9.]

§ 10143. [8462.] Refusal or Revocation of License—Procedure.

When, upon investigation, the state board of pharmacy becomes convinced that anyone registered under the laws of this state or applying for examination and registration, either as a licentiate, as an assistant

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pharmacist or as a registered apprentice, is guilty of a felony, misdemeanor, gross immorality or sells or gives away morphine, cocaine or any other narcotic to any person addicted to the use of such drugs or is addicted to the liquor or drug habit to such a degree as to render him or her unfit for the practice of pharmacy, or is guilty of selling, disposing of or giving away spirituous, fermented, malt or other intoxicating liquors contrary to law and not in good faith, the board of pharmacy may examine and refuse to register, or revoke, cancel and suspend the registration of such licentiate, assistant pharmacist or registered apprentice. In any case of the refusal or revocation of a license by said board of pharmacy under the provisions of this chapter, said board shall file a brief and concise statement of the grounds and reasons for such refusal or revocation in the office of the secretary of said board, which said statement, together with the decision of said board in writing, shall remain of record in said office. Before a license can be revoked by said board of pharmacy under the provisions of this chapter, a complaint of some person under oath must be filed in the office of the secretary of said board of pharmacy, charging the acts of misconduct and facts complained of against the applicant, licentiate, assistant pharmacist or registered apprentice accused, in ordinary and concise language, and thereupon said board shall cause to be served upon such accused applicant, licentiate, assistant pharmacist or registered apprentice a written notice and copy of such complaint, which said notice shall contain a statement of the time and place of hearing of the matters and things set forth and charged in such complaint, and said notice shall be so served at least ten days prior to the time of such hearing. Such accused applicant, licentiate, assistant pharmacist or registered apprentice may appear at such hearing, and defend against the accusation of such complaint, personally and by counsel, and may have the sworn testimony of witnesses taken and present other evidence in his behalf at such hearing, and said board may receive the arguments of counsel at such hearing. [L. '09, p. 733, § 10.]

See notes to § 10129.

This and the following sections were added to this chapter by the amendatory act.

Cited in 96 Wash. 432.

§ 10144. [8463.] Decisions of Appeals from Board.

In any case of the refusal or revocation of a license by said board under the provisions of this chapter, the applicant whose application shall be so refused, and the licentiate, assistant pharmacist and licensed apprentice whose license shall be so revoked by said board, shall have the right to appeal from the decision so refusing or revoking such license within thirty days after the filing of such decision in the office of the secretary of said board, as hereinbefore in this act provided. Such appeal shall be to the superior court in and for the county in which was held the last general meeting of said board, prior to the refusal of such license, in the case of such refusal; and to the superior court in and for the county in which the hearing was had upon which such license was revoked, in case of such revocation. In any case the person desiring to take such appeal shall serve, or cause to be served, upon the secretary of said board a written notice of such appeal, which shall contain a

statement of the grounds of such appeal and shall file in the office of such secretary an appeal bond, with good and sufficient surety, to be approved by said state board of pharmacy of the state of Washington, conditioned for the speedy prosecution of such appeal, and the payment of such costs as may be adjudged against him upon such appeal. Said secretary of the state board of pharmacy shall, within ten (10) days after the service of such notice of appeal and the filing and approval of said appeal bond, transmit to the clerk of the superior court to which such appeal is taken, a certified copy, under the seal of said board, of the decision of said board, and the grounds thereof, in the case of the refusal of a license; and in addition thereto a certified copy under such seal of the complaint in the case of the revocation of a license, together with the bond and notice of appeal. The clerk of such court shall thereupon docket such appeal causes, and they shall stand for trial in all respects as ordinary civil actions, and like proceedings be had thereon. Upon such appeal said cause shall be tried de novo. Either party may appeal from the judgment of said superior court to the supreme court of the state in like manner as in civil actions within sixty (60) days after the rendition and entry of such judgment in said superior court. If such judgment shall be in favor of the party appealing from the decision of said board, and in case said examining board does not appeal from said judgment within sixty (60) days, then, and in that case, said board shall, at the end of sixty (60) days, and immediately upon the expiration thereof, issue to such successful party the usual license to practice pharmacy in this state, and in addition thereto, shall reinstate upon the records of said board the name of such successful applicant, in case of the revocation of his license by such board. In case of such appeal to the supreme court by said board, no such license shall be issued nor reinstatement be required until the final determination of said cause, and as hereinafter provided. In case the final decision of the supreme court be against said examining board, then and in that case said court shall make such order in the premises as may be necessary, and said board shall act accordingly: Provided, that in no case shall an appeal bond be required of said board nor shall any costs be adjudged or taxed against the same. [L. '09, p. 734, § 11.]

See notes to § 10129.

Cited in 96 Wash. 432.

§ 10145. [8464.] Registration of Ownership of Pharmacy.

Within ninety days from and after the passage of this act, the owner of each and every drug store, pharmacy or dispensary, shall file with the secretary of the state board of pharmacy on a blank therefor provided, a declaration of ownership and location, and shall then receive from the board a duly signed registration of location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of ownership of the pharmacy, drug store or business mentioned therein. It shall be the duty of the owner to notify the board of any change of location and ownership, and shall keep the registration of location certificate properly exhibited in said drug store. Failure to conform with this provision shall be deemed a misdemeanor, and upon conviction

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thereof shall be fined not less than ten dollars nor more than fifty dollars. [L. '09, p. 735, § 12.]

Cited in 99 Wash. 448.

The certificate is not admissible under this section to show ownership, in a pros-

ecution of a liquor charge against a druggist: State v. Billingsley, 99 Wash. 445, 169 Pac. 845.

§ 10146. [8465.] General Penal Provisions.

Any person who shall violate any of the provisions of this chapter and for which a penalty is not hereinbefore provided for shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding fifty dollars, or may be imprisoned in the county jail not exceeding six months. [L. '09, p. 736, § 13.]

CHAPTER X.

OPTOMETRY.

§ 10147. Practice of Optometry Defined.

Any person shall be deemed to be practicing optometry within the meaning of this act, who shall in any manner, except as provided in section 10159, 1st, display any sign, circular, advertisement or device purporting or offering to in any manner examine eyes, test eyes, fit glasses, adjust frames or setting himself or herself forth as an optometrist, optician, specialist, optical specialist, eyesight specialist or refractionist, with intent to induce people to patronize himself, herself, or any other person; 2d, who shall make in any manner a test or examination of the eye or eyes of another, to ascertain the refractive, muscular or pathological condition thereof; 3d, who shall in any manner adapt lenses to the human eye for any purpose either directly or indirectly. [L. '19, p. 396, § 1.]

Special regulation of persons treating ocular diseases. **Ann. Cas.** 1917B, 803.

Statutes regulating practice of medicine as applicable to oculists, opticians, or optometrists. 9 **Ann. Cas.** 203; **L. E. A.** 1917C, 826.

§ 10148. Permit to Practice.

It shall be unlawful for any person to practice optometry in the state of Washington without first obtaining a certificate of registration or other permit from the board of examiners, and filing the same for record with the clerk of each and every county in which he may desire to practice. [L. '19, p. 396, § 2. Cf. L. '09, p. 851, § 4.]

§ 10149. Powers and Duty of Board.

The powers and duties of the optometry board shall be as follows:

(1) To organize and elect from among their members a president and treasurer of said board, who shall hold office for one year or until their successors are elected, and to elect a secretary who may or may not be a member of said board, and who may be removed from office at any time by a majority vote of the board. To adopt and use a common seal, which shall be in the custody of the secretary. The secretary shall execute a bond in the sum of one thousand dollars (\$1,000), which shall meet

the approval of the board. The secretary shall collect all moneys due the board and pay the same to the treasurer, shall keep all records and perform such other duties as may from time to time be prescribed by the board. All moneys received or collected by said board, or any member or officer thereof, during any month shall be turned over before the tenth of the succeeding month to the state treasurer, together with a verified statement showing source from which such money is derived.

(2) The treasurer shall furnish a good and sufficient bond in the sum of one thousand dollars (\$1,000), and shall safely deposit all moneys of the board in a suitable bank, which shall be approved by the board, and shall pay the same out only on orders signed by the secretary and president of the board, and no such orders shall be issued for any other purpose than may be necessary for the execution of the provisions of this act.

(3) To employ agents, attorneys and inspectors to secure evidence of, report on, and to prosecute any violations of any of the provisions of this act, and to employ other necessary assistants for the execution of this act: Provided, that no state officer shall be eligible to employment by the board.

(4) To hold meetings of the board in the month of August in each year, and as often in addition as may be necessary for the examination of candidates or the transaction of other necessary business. Such meetings may be held at such times and at such places as shall be deemed expedient by the board: Providing that one meeting each year shall be held in the city of Spokane.

(5) To keep an accurate record of the proceedings of all meetings and actions of the board, and of all receipts and disbursements of the funds of the board together with all vouchers for same. Of all prosecutions for violations of this act, of all examinations for certificates, recording the names and addresses of all persons taking such examinations and the record of their standing in the examination. To keep an accurate inventory of all property of the board and to obtain a receipt therefor from their successors in office. All records of the board shall be public and shall be kept in the office of the board.

(6) To visit and examine public schools wherein the science of optometry is taught in this state, and accredit the same if found to be furnishing a sufficient course of study for the preparation of optometrists.

(7) To keep a book to be known as the Official Optometry Register, in which shall be recorded the names and addresses of all optometrists registered in the state of Washington, together with the number and date of issue of the certificate of registration, and a complete record of the renewals or revocations thereof.

(8) To grant or refuse to grant certificates of registration as herein provided and to revoke the certificate of registration of any optometrist for any of the causes specified in section 10156.

(9) To administer oaths for any purpose connected with the work of the board, including the taking of testimony regarding the revoking of certificates.

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(10) To make rules for the procedure of the board and for the conduct and government of candidates for examination, which shall not be inconsistent with the provisions of this act.

(11) To report to the governor annually, between the first and fifth days of January the official acts of the board for the preceding year, giving an account of all funds collected and disbursed during the year. [L. '19, p. 397, § 4.]

See *infra*, § 10854, duties of optometry board devolve upon director of licenses.

See *infra*, § 10893, optometry board abolished.

§ 10150. Qualifications and Examination of Applicants.

Persons eligible for examination for registration, shall be any citizen of the United States of America, who shall have a preliminary education of or equal to, two years in a state high school, has completed a full attendance course in a regularly chartered school of optometry maintaining a standard which is deemed sufficient and satisfactory by the optometry board, or who has studied at least three years in the office of a regularly registered optometrist or who has successfully passed an examination before a board of optometry in some other state, who is of good moral character, who is not afflicted with any contagious or infectious disease, who has a visual acuity in at least one eye, of a standard known as 20/40 under correction. Such person shall file an application for examination and registration with said board at any time fifteen days prior to the time fixed for such examination, or at a later date if approved by the board, and such application must be on forms approved by the board, and properly attested, and if found to be in accordance with the provisions of this act shall entitle the applicant upon payment of the proper fee, to take the examination prescribed by the board. Such examination shall not be out of keeping with the established teachings and adopted text books of the recognized schools of optometry, and shall be confined to such subjects and practices as are recognized as essential to the practice of optometry. All candidates without discrimination, who shall successfully pass the prescribed examination, shall be registered by the board and shall, upon payment of the proper fee, be issued a certificate of registration. [L. '19, p. 400, § 5.]

See notes to § 10149.

§ 10151. County Clerk to Keep Register—Penalty for Misfeasance.

It is hereby made the duty of the county clerk of each organized county in this state to keep a book known as the "Optometry Register" of such county, and set apart one full page for the registration of each optometrist, and to record in said optometry register, the name and record of each optometrist who presents a certificate from the board of examiners, issued under this act. The county clerk shall receive the sum of one dollar (\$1) from each optometrist so registered, which shall be his full compensation for all duties required under this act. When an optometrist shall die, or remove to another county, or have his certificate revoked, it shall be the duty of said clerk to make a note of the fact at the bottom of the page as closing the record. On January 1st in each

year said clerk shall, upon request of the board, certify to the office of the state optometry board, a correct list of the optometrists then registered in the county, together with such other information as said board may require. Any county clerk upon conviction of knowingly violating any of the provisions of this act shall be fined not less than ten dollars (\$10) or more than fifty dollars (\$50). A copy from the "Optometry Register," pertaining to any person, certified to by said county clerk, under the seal of his office, also a certificate issued by said official, certifying that any person named has or has not registered in said office, as required by this act, shall be admitted as evidence in all hearings for revocation of certificates. [L. '19, p. 400, § 6. Cf. L. '09, p. 851, § 4.]

See notes to § 10149.

§ 10152. Unlawful Acts.

It shall be unlawful for any person:

- (1) To sell or barter, or offer to sell or barter any certificate of registration issued by the optometry board; or
- (2) To purchase or procure by barter any certificate or registration with intent to use the same as evidence of the holder's qualification to practice optometry; or
- (3) To alter with fraudulent intent in any material regard such certificate of registration; or
- (4) To use or attempt to use any such certificate of registration which has been purchased, fraudulently issued, counterfeited or materially altered as a valid certificate of registration; or
- (5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm or corporation with which the accused has no connection; or
- (6) To willfully make any false statements in material regard in an application for an examination before the optometry board, or for a certificate of registration; or
- (7) To practice optometry in this state without having at the time of so doing a valid unrevoked certificate of registration, or other permit, issued by the optometry board of this state, and properly recorded as provided in this act; or
- (8) To in any manner barter or give away as premiums either on his own account or as agent or representative for any other purpose, firm or corporation, any eye-glasses, spectacles, lenses or frames.
- (9) To use drugs in the examination of the eyes. [L. '19, p. 401, § 7.]

§ 10153. Temporary Permits to Practice.

The optometry board may at its discretion, issue a permit to practice optometry during the interim between examinations, to any person who has filed an application for examination which has been accepted by said board, as admitting the applicant to the next examination. Such permit shall be valid only until the date of the next examination and shall not be issued sooner than thirty days following any regular examination, and no permit shall be issued to any person who has failed before the optometry board, nor where a certificate has been revoked. [L. '19, p. 402, § 8.]

See notes to § 10149.

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§ 10154. Fees.

The fee for application for examination shall be fifteen dollars (\$15) and the fee for issuing a certificate of registration shall be ten dollars (\$10), which shall be paid to the board as they shall prescribe. [L. '19, p. 402, § 9.]

§ 10155. Board Proceedings by Mail—Records as Evidence.

The board shall have power to act upon any question that may require a decision, by mail, such action shall be by form of resolution and shall be signed by each member of the board, properly attested, and shall bear the seal of the board and become a part of the regular records of the proceedings of the board, and shall be admitted as evidence in any court, or hearing for revocation of certificate. [L. '19, p. 403, § 10.]

See notes to § 10149.

§ 10156. Revocation of Certificates—Grounds.

The board may, at its discretion, revoke the certificate of registration of any optometrist for any one of the following causes:

(1) Conviction of the accused of any crime of the grade of felony, or one which involved moral turpitude; or

(2) Any form of fraud or deceit used in securing a certificate of registration; or

(3) Any grossly unprofessional conduct, of a nature likely to deceive or defraud the public; or

(4) The obtaining of any fee by fraud or misrepresentation; or

(5) The employing either directly or indirectly of any person or persons commonly known as "cappers" or "steerers" to obtain business; or

(6) To employ any person to solicit from house to house, or to personally solicit from house to house; or

(7) The employment of any unregistered person to perform the work covered by this act; or

(8) To advertise in any way in which untruthful, improbable or impossible statements are made regarding treatments, cures or values; or

(9) The use of the term "eye specialist" in connection with the name of such optometrist; or

(10) For habits of intemperance or habitual drunkenness, addiction to the drug habit, in a manner likely to destroy the accuracy of the work of an optometrist; or

(11) Affliction with a contagious or infectious disease, or one which is likely to destroy the accuracy of the work of the afflicted; or

(12) For any cause for which the optometry board might refuse to admit a candidate to their examination; or

(13) For the violation of any of the provisions of this act; or

(14) Gross ignorance regarding the work of an optometrist, which shall be deemed to mean, "inability to demonstrate in manner satisfactory to the optometry board, their practical ability to correctly measure eyes, fit glasses, adjust frames and neutralize lenses correctly." [L. '19, p. 403, § 11. Cf. L. '09, p. 855, § 12.]

See notes to § 10149.

§ 10157. Notice of Charges—Hearings.

Before any certificate shall be revoked, the optometry board shall mail to the holder of such certificate, at the last known postoffice address, a notice of the charges against him, and the holder of said certificate shall have ten days from the date of such notice, in which to file his answer with the optometry board and shall, if requested, be given a public hearing and opportunity to produce testimony in his favor and to confront the witness against him, and the revocation of any certificate of registration revoked for any of the above causes except those specified in one and two of section 10156 may be set aside upon application of the holder of said certificate, at any time within six months from the date of such revocation, upon proof being made to the satisfaction of the optometry board, that the cause of such revocation no longer exists and that the applicant has been sufficiently punished. Before setting aside the revocation of any certificate, the board may, at its discretion, require the applicant to pass the regular examination given for applicants for certificates of registration. [L. '19, p. 404, § 12.]

See notes to § 10149.

§ 10158. Annual Renewal Fee.

During the month of January of each year, every registered optometrist shall pay to the optometry board the sum of two dollars (\$2), as a renewal fee, and failure to pay such fee within the prescribed time shall ipso facto, cause the suspension of such optometrist. The secretary shall mail a notice of said suspension to the last known postoffice address of the one so suspended, between the first and fifth days of February, March and April, next following, and if the fee is not paid by the first of May, the board may declare the certificate revoked in the regular manner, and shall immediately notify the county clerk of the county in which the revoked certificate is recorded. [L. '19, p. 405, § 13.]

See notes to § 10149.

§ 10159. Inapplicable to Oculists and Merchants.

Nothing in this act shall be construed to pertain in any manner to the practice of any regularly qualified oculist or physician, who is regularly licensed to practice medicine in the state of Washington, nor to any person who in the regular course of trade, sells or offers for sale, spectacles or eyeglasses as regular merchandise without pretense of adapting them to the eyes of the purchaser, and not in evasion of this act. [L. '19, p. 405, § 15. Cf. L. '09, p. 855, § 13.]

§ 10160. Prior Certificates to Remain in Force.

Any certificate which may have been issued by an optometry board of this state, and which shall be in full force and effect at the time of the passage of this act, shall be continued under the provisions of this act. [L. '19, p. 406, § 17.]

See notes to § 10149.

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§ 10161. Partial Invalidity.

Any question of unconstitutionality arising concerning any of the sections or provisions of this act shall in no wise affect any other section or provision of the act. [L. '19, p. 406, § 18.]

§ 10162. Designation of Act.

This act shall be known, and may be referred to as, "The Optometry Law." [L. '19, p. 406, § 20.]

§ 10163. Penalty for Violations.

Any person violating any provision of this act shall, upon conviction thereof, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned not less than thirty days nor more than six months, or both.. [L. '19, p. 406, § 22. Cf. L. '09, p. 855, § 12.]

CHAPTER XI.

NURSES.

§ 10164. [8479.] Misrepresentation as Registered Nurse Prohibited.

From and after the expiration of the ninety days immediately following the passage of this act no person shall in the state of Washington, in any manner whatsoever, represent herself to be a registered nurse, or allow herself to be so represented, unless she has been and is registered by the nurses' examining board in accordance with the provisions of this act. [L. '09, p. 66, § 1.]

"Act" in this and the following sections refers to this chapter.

See *infra*, § 10854, duties of nurses' examining board devolve upon director of licenses.

See *infra*, § 10893, nurses' examining board abolished.

State regulation of practice of nursing. *Ann. Cas.* 1917C, 168.

Nursing as practice of medicine. *Ann. Cas.* 1918E, 687.

§ 10165. [8481.] Officers, Meetings, Records, Examinations.

The nurses' examining board shall meet in the state of Washington within ninety days after their appointment and organize the board and annually thereafter shall elect from its members a president, secretary and treasurer. It shall adopt such by-laws as it shall deem necessary for carrying into effect the provisions of this act, and may amend the same from time to time at the discretion of said board. The secretary shall be required to keep a record of all meetings of the board, and also a register of the names of all nurses duly registered under this act, which register shall be open to the public at all reasonable times, and to furnish a certificate of registration to all such nurses, said certificate to be renewed at end of five years upon payment of one dollar to the examining board, at least three months' notice having been given, by registered letter, of expiration of said certificate. The said board shall hold examinations at least once a year, and the notice of such examination shall be given in one daily newspaper published in three first-class cities of the state of Washington, and in a nursing journal published on the

Pacific coast at least thirty days prior to said examination. [L. '09, p. 67, § 3.]

See notes to § 10164.

§ 10166. [8482.] Scope of Examination—Qualifications—Fee.

Every nurse desiring to style herself a registered nurse in the state of Washington shall make application to the nurses' examining board for examination for registration, such examination to consist of questions in surgical nursing, contagions, materia medica, dietetics, medical nursing, obstetrics and gynaecology, anatomy, physiology and hygiene, and at the time of making such application applicant shall pay to the treasurer of said board five dollars, no portion of said fee to be returned. Said applicant must furnish satisfactory evidence that she is over twenty years of age, of good moral character, and free from habits liable to interfere with her services as a nurse, and further, that she holds a diploma from a training school for nurses of a reputable hospital: Provided, that training school shall give not less than two years' training in a general hospital, or instruction of same kind, and, to at least the same extent, as that given in the general hospital, all of which shall be determined by the nurses' examining board. [L. '09, p. 67, § 4.]

See notes to § 10164.

§ 10167. [8483.] Certificates Without Examination—To Whom.

Any person possessing the qualifications required in section 10166 who is engaged in nursing in the state of Washington at the time of the passage of this act or shall graduate from a reputable training school of a general hospital within three years of passage of this act, shall be entitled to registration without examination upon payment of registration fee. [L. '09, p. 68, § 5.]

§ 10168. [8484.] Revocation of Certificates.

The registration of any person as a nurse in the state of Washington may be revoked and the certificate of such person canceled if it should be found to have been obtained by fraud, or if she be found guilty by the nurses' examining board of any act derogatory to the standing and morals of the profession of nursing. But before any certificate shall be revoked the holder thereof shall be entitled to thirty days' notice of the charges against her, and after a full and fair hearing the certificate can be revoked by a majority vote of the whole board. [L. '09, p. 68, § 6.]

See notes to § 10164.

§ 10169. [8485.] Expenses and Compensation of Board.

Each member of the nurses' examining board shall receive a compensation of five dollars per day for each day in which she is actually and necessarily in attendance upon the meetings of the board and in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings. All such compensation and expenses and all other expenses incident to the execution of the provisions

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of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers. The secretary and treasurer of said board shall receive a compensation to be determined by said board and not to exceed one hundred dollars per annum. All moneys received or collected by said board or any officer or any member thereof during any month shall be turned over to the state treasurer before the tenth day of the succeeding month together with a verified statement showing the sources from which such money was derived. [L. '13, p. 255, § 1. Cf. L. '09, p. 68, § 7.]

See notes to § 10164.

§ 10170. [8486.] Violation, a Misdemeanor.

Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor. [L. '09, p. 68, § 8.]

§ 10171. [8487.] Nurses from Other States.

The nurses' examining board shall have power to register in like manner without examination, any person who has been registered as a graduate nurse in another state or territory under laws which in the opinion of said board maintains a standard substantially equivalent to that provided for by this chapter. [L. '09, p. 68, § 9.]

See notes to § 10164.

§ 10172. [8488.] Construction of Act.

Nothing in this chapter shall be construed to prevent any person from nursing any other person in the state of Washington either gratuitously or for hire: Provided, that such person so nursing shall not represent herself as being a registered nurse. Nothing in this chapter shall be construed as authorizing any person to practice medicine or surgery, or midwifery, in said state. [L. '09, p. 69, § 10.]

§ 10173. [8489.] "She" Includes "He."

The word "she" and the derivatives thereof, wherever they occur in this chapter, shall be construed so as to include the word "he" and derivatives. [L. '09, p. 69, § 11.]

CHAPTER XII.

MIDWIFERY.

§ 10174. License Required.

Any person who shall practice midwifery in this state after July first, one thousand nine hundred and seventeen, shall first obtain from the state board of medical examiners of the state of Washington a license so to do, and the said board is authorized to grant such license after examination of the applicant as hereinafter provided. [L. '17, p. 717, § 1.]

See infra, § 10854, duties devolve upon director of licenses.

See infra, § 10893, state board of medical examiners abolished.

Practice of midwifery as practice of medicine. 13 Ann. Cas. 571; 17 L. R. A. (N. S.) 94.

§ 10175. Application for License.

Any person seeking to be examined shall present to the said board, at least ten days before the commencement of the said examination, a written application on a form or forms provided by the said board setting forth under affidavit the name, age, nativity, residence, moral character and time spent in obtaining a common school education or its equivalent; that the candidate has received a certificate or diploma from a legally incorporated school on midwifery in good standing, granted after at least two courses of instruction of at least seven months each in different calendar years or a certificate or diploma in a foreign institution on midwifery of equal requirements conferring the full right to practice midwifery in the county in which it was issued. The diploma must bear the seal of the institution from which the applicant was graduated. Foreign applicants must present with the application a translation of the foreign certificate or diploma made by and under the seal of the consulate of the country in which the said certificate or diploma was issued. The application must be indorsed by a duly registered reputable physician of the State of Washington. [L. '17, p. 717, § 2.]

See notes to § 10174.

§ 10176. Admission to Examination.

If the application is approved and the candidate shall have deposited the sum of fifteen dollars (\$15) as an examination fee with the secretary of the said board, the candidate shall be admitted to the examination, and in case of failure to pass the examination, may be re-examined at any regular examination within one year without the payment of an additional fee, said fee to be retained by the board after failure to pass the second examination. [L. '17, p. 718, § 3.]

See notes to § 10174.

§ 10177. Examination—Subjects—Issuance of License.

The state board of medical examiners is hereby authorized and empowered to execute the provisions of this act and shall hold examinations in midwifery on the first Monday in January and July, at such places as the board may select, from ten o'clock A. M. to five o'clock P. M., and at such other times as the said board may deem expedient. The examinations may be oral, written, or both, and shall be in the English language; if desired in any other language, an interpreter may be provided by said board upon notification of the secretary at least ten days before examination. The cost of said interpreter shall be defrayed by the applicant for the license.

Examinations shall be held on the following subjects:

- (1) Anatomy of pelvis and female genital organs.
- (2) Physiology of menstruation.
- (3) Diagnosis and management of pregnancy.
- (4) Diagnosis of foetal presentation and position.
- (5) Mechanism and management of normal labor.
- (6) Management of puerperium.

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- (7) Injuries to the genital organs following labor.
- (8) Sepsis and anti-sepsis in relation to labor.
- (9) Special care of the bed and lying-in room.
- (10) Hygiene of mother and infant.
- (11) Asphyxiation, convulsions, malformation and infectious diseases of the new-born.
- (12) Causes and effects of ophthalmia neonatorum.
- (13) Abnormal conditions requiring attention of a physician.
- (14) Requirements of the vital statistics laws pertaining to the reporting of births and the rules of the state board of health relative to ophthalmia neonatorum or other infectious diseases of the new-born.

Said examination shall be sufficient to test the scientific and practical fitness of candidates to practice midwifery and the board may require examination on other subjects relating to midwifery from time to time. All application papers shall be deposited with the secretary of the state board of medical examiners and there retained for at least one year, when they may be destroyed.

If said examination is satisfactory, said board shall issue to such candidate a license with the certified copy signed by its president and secretary, and attested by its seal, entitling the candidate to practice midwifery in the state of Washington: Provided, that said license shall not authorize the holder to prescribe any drugs or medicine except some household remedy after the birth of the infant. [L. '17, p. 718, § 4.]

§ 10178. Registration of License.

Every person holding a license authorized in this act must have the same recorded in the office of the county clerk in the county in which the holder is practicing her profession, and the fact of such recording shall be indorsed on the certificate by the county clerk recording the same. Every such person, on a change of her residence, must have the license recorded in the county to which she shall have removed. The absence of such record shall be prima facie evidence of the want of possession of such certificate; and any person practicing midwifery in this state without first having filed her certificate with the county clerk as herein provided, shall be deemed guilty of a misdemeanor. [L. '17, p. 719, § 5.]

See notes to § 10174.

§ 10179. Record Book.

The county clerk shall keep in a book provided for the purpose, a complete list of the certificates recorded by him, with the date of the record, and such book shall be open to public inspection during his office hours. [L. '17, p. 720, § 6.]

§ 10180. Refusal or Revocation of License—Grounds—Right to Hearing.

Said board of medical examiners may refuse to grant or may revoke any license herein provided for, for any of the following reasons: Persistent inebriety; the practice of criminal abortion; the commission of any crime involving moral turpitude; presentation of a certificate or diploma for registration or license illegally obtained; application for ex-

amination under fraudulent misrepresentation; neglect or refusal to make proper returns to the health officer or health department of births or of puerperal contagion or infectious diseases within the required limit of time; failure to record her license with the clerk of the county in which the licentiate resides or practices; failure to secure the attendance of a reputable physician in a case of miscarriage, hemorrhage, abnormal presentation or position, retained placenta, convulsions, prolapse of the cord, fever during parturient stage, inflammation or discharge from the eyes of a new-born infant, or whenever there are any abnormal or unhealthy symptoms in either the mother or the infant during labor or the puerperium.

In complaints of violations of the provisions of this section, the accused shall be furnished with a copy of the complaint and be given a hearing before said board in person or by attorney. Any midwife refused admittance to the examination or whose license has been revoked who shall attempt or continue the practice of midwifery, shall be subject to the penalties hereinafter prescribed. [L. '17, p. 720, § 7.]

See notes to § 10174.

§ 10181. "Practicing Midwifery," Defined.

Any person shall be regarded as practicing midwifery within the meaning of this act who shall render medical aid to a woman in childbirth for a fee or compensation or who shall advertise as a midwife by signs, printed cards or otherwise. Nothing shall be construed in this act to prohibit gratuitous services. It shall be the duty of a midwife to always secure the immediate services of a legally qualified physician whenever any abnormal signs or symptoms appear either in the mother or the infant. [L. '17, p. 721, § 8.]

§ 10182. Penalty for Violations of Act.

Any person hereafter practicing midwifery in this state without first complying with the provisions of this act, shall be guilty of a misdemeanor and shall be punished by fine of not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250), or by imprisonment in the county jail for not less than ten days nor more than six months, or both, at the discretion of the court. [L. '17, p. 721, § 9.]

§ 10183. Repealing and Saving Clause.

All acts or parts of acts inconsistent with the provisions of this act may be and the same are hereby repealed: Provided, this act shall not repeal the provisions of the vital statistics laws of the state, but shall be deemed as additional and cumulative provisions. [L. '17, p. 721, § 10.]

§ 10184. "Certificate" and "License" Synonymous.

The words "certificate" and "license" shall be known as interchangeable terms in this chapter. [L. '17, p. 721, § 11.]

§ 10185. Construction of Act.

This act shall not be construed to interfere in any way with the practice of religion, nor be held to apply to or regulate any kind of treatment by prayer. [L. '17, p. 721, § 12.]

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Poll Tax. See "Municipal Corporations," § 9210; "Taxation," § 11242;
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PRISONS AND REFORMATORIES.

TITLE LXIX.

PRISONS AND REFORMATORIES.

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CHAPTER I.

COUNTY AND CITY JAILS.

§ 10186. [8490.] Jailer may have Assistance, When—Compensation.

Whenever the board of county commissioners of any county of the state of Washington deem it necessary for the sheriff of any county to employ assistance for the safekeeping of any person or persons in custody of said sheriff on criminal charge or otherwise it shall be lawful for said commissioners to authorize said sheriff to employ one or more jailers for such purpose, and said county shall pay said jailer quarterly out of any funds in the county not otherwise appropriated: Provided, such compensation shall in no case exceed fifty dollars per month, and shall be fixed by said board of county commissioners. [Cf. Cd. '81, § 2077; L. '83, p. 45, subd. 6; 1 H. C., § 1189.]

See supra, § 4034, county to provide jail.

See supra, § 4160, sheriff may appoint deputies.

See supra, §§ 8966, 9034, first and second class cities may erect.

See supra, § 9180, fourth class city, jail.

§ 10187. [8491.] Temporary Confinement—Price of Board.

All prisoners whom it may be necessary to convey to the place where the superior court is held, or to any place for an examination before the judge, if conveyed beyond the bounds of the county in which they are confined, shall be conveyed to and from their place of confinement by the sheriff of the county in which they are confined, or the sheriff of the county to which such prisoner belongs, at the expense, in the first instance, of the county to which such prisoner belongs; and such sheriff shall have a right to the custody of the prisoner within the limits of any county in this state through which he may pass; and for the temporary confinement of his prisoner may use the county [jail of any county free of charge, except for board, which shall not exceed thirty cents a meal]. [Cd. '81, § 1165; 1 H. C., § 1190.]

§ 10188. [8492.] Board of Prisoners, Price of.

It shall be unlawful for the board of county commissioners of any county in this state to allow more than sixty cents per day for the boarding of each prisoner confined in the county jail of their respective counties. [L. '93, p. 26, § 1.]

§ 10189. [8493.] City Prisoners Sentenced by Justice of Peace to Work, When.

When a person has been sentenced by any justice of the peace in a city in this state to a term of imprisonment in the city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city, and to wear an ordinary ball and chain while performing such labor. [Cd. '81, § 2075; 1 H. C., § 1192.]

§ 10190. [8494.] County Prisoners may be Compelled to Work, When and How.

When a person has been sentenced, by a justice of the peace, or a judge of the superior court, to a term of imprisonment in the county jail, whether in default of payment of a fine or costs, or otherwise, such person may be compelled to work eight hours each day of such term in and about the county buildings, public roads, streets, and grounds: Provided, this section and the last preceding one of this chapter shall not apply to persons committed in default of bail. [Cf. L. '58, p. 10; Cd. '81, § 2076; 1 H. C., § 1193.]

See supra, §§ 1933, 2209, fines how worked out.

See supra, § 2279, employment of prisoners.

See supra, § 4062, county commissioners may order convicts to work.

See infra, § 10208, working prior to conviction prohibited.

See infra, § 10221, and notes, employment of convicts.

§ 10191. [8495.] Superior Judges to Prescribe Rules for Keeping Jails.

The judges of the superior courts of the several counties of this state shall, from time to time, as they may deem necessary, prescribe in writing, rules for the regulation and government of the jails in the several counties, upon the following subjects:

1. The cleanliness of the prisoners;
2. The classification of prisoners in regard to sex;
3. Bed and clothing for persons sentenced for felonies;
4. Warming, lighting and ventilation of the prison;
5. The employment of medical and surgical aid, when necessary;
6. Employment, temperance, and instruction of the prisoners;
7. The supplying of each prisoner with a Bible;
8. The intercourse between prisoners and their counsel and other persons;
9. The punishment of prisoners for violation of the rules of the prison;
10. Such other regulations as said judges may deem necessary to promote the welfare of said prisoners: Provided, that such rules shall not be contrary to or in any way impair laws now existing in this state. [L. '77, p. 302, § 1; 1 H. C., § 1194.]

For validity of this statute, see Cd. '81, §§ 1295, 3320.

§ 10192. [8496.] Rules to be Printed and Furnished to Officers.

The said judges shall, as soon as necessary, cause a copy of said rules to be delivered to the county commissioners in the several counties,

and it shall be the duty of said commissioners forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules for each and every room or cell of said jail, and also to forward a copy of said rules to the secretary of state, who shall file away and preserve the same. [L. '77, p. 302, § 2; 1 H. C., § 1195.]

§ 10193. [8497.] Sheriff to Keep Rules Posted in Conspicuous Place.

The sheriff shall, on the receipt of said rules, cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell of said jail. [L. '77, p. 303, § 3; 1 H. C., § 1196.]

§ 10194. [8498.] Rules—Judges may Revise and Amend—Distribution of.

The judges aforesaid may, from time to time, as they may deem necessary, revise, alter, or amend said rules, and such revised rules shall be printed and disposed of by said commissioners and sheriff, in the same manner as is directed by sections 10191, 10192. [L. '77, p. 303, § 4; 1 H. C., § 1197.]

§ 10195. [8499.] Sheriff to have Charge of Jail and to Conform to Rules.

The sheriff, or in case of his death, removal, or disability, the person appointed by law to supply his place, shall have charge of the county jail of his proper county and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform in all respects to the rules and directions of said judge above specified, or which may from time to time by such judge be made and communicated to him by said commissioners. [L. '77, p. 303, § 5; 1 H. C., § 1198.]

Cited in 100 Wash. 321.

This and the next section are but declaratory of the common law as to the sheriff's duty to exercise ordinary care

toward prisoners: *Kusah v. McCorkle*, 100 Wash. 318, 170 Pac. 1023, L. R. A. 1918C, 1158.

§ 10196. [8500.] Jail Register—Must Contain What Entries.

The sheriff or other officer performing the duties of sheriff of each county in this state shall, as soon as necessary after the passage of this chapter, procure at the expense of the proper county a suitable book to be called the jail register, in which the said sheriff, by himself or his jailer, shall enter—

1. The name of each prisoner, with the date and cause of his or her commitment, together with a list and value of property taken from said prisoner, or delivered to the sheriff or other officer at the time of the commitment of said prisoner;

2. The date or manner of his or her discharge;

3. What sickness, if any, has prevailed in the jail during the year, and if known, what was the cause of such disease;

4. Whether any or what labor has been performed by the prisoners, and the value thereof;

5. The practice observed during the year of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing;

6. The habits of the prisoners as to personal cleanliness, diet, and order;

7. The means furnished prisoners of literary, moral and religious instruction;

8. All other matters required by said rules or in the discretion of such sheriff deemed proper; that the said sheriff, or other officer performing the duties of sheriff, shall carefully keep and preserve the said jail register in the office of the jailer of his proper county, and at the expiration of said office shall deliver the same to his successor in office. [L. '77, p. 303, § 6; 1 H. C., § 1199.]

Cited in 100 Wash. 322.

§ 10197. [8501.] Sheriff must Make Report—Copies of.

The sheriff or other officer performing the duties of the sheriff shall, on or before the first day of October in each year, make out in writing from said jail register a jail report, one copy of which said report he shall forthwith file in the office of the clerk of the superior court of the proper county, one copy with the county auditor of his county for the use of the commissioners thereof, and one copy of said report he shall transmit to the secretary of state, and it shall be the duty of said secretary to communicate the report of the several sheriffs of this state to the legislature on or before the tenth day of its session. [L. '77, p. 303, § 7; 1 H. C., § 1200.]

§ 10198. [8502.] Duty of Court to Inform Grand Jury of Rules, Plans, etc.

It shall be the duty of the superior court to give this chapter in charge of the grand jury once each session of said court (if a grand jury is in attendance), and lay before them any and all rules, plans, or regulations established by the superior judge relating to county jails and prison discipline which shall then be in force. [L. '77, p. 304, § 8; 1 H. C., § 1201.]

§ 10199. [8503.] Visiting and Management of.

The grand jury of each county shall visit the jail of the county where the court is held, examine its state and condition; examine and inquire into the discipline and treatment of prisoners, their habits, diet, and accommodation; and it shall be their duty to report to said court, in writing, whether the rules of the said judges have been faithfully kept and observed, or whether any of the provisions of this act have been violated. It shall also be the duty of the prosecuting attorney of each county, once in each year, to visit the jails not accessible to the grand jury, and he shall make a report to the superior court to the same effect as required of the grand jury. It shall be the duty of the county commissioners of each county of this state to visit the jail of their county once during each of their regular meetings of each year. [L. '77, p. 304, § 9; 1 H. C., § 1202.]

§ 10200. [8504.] Sheriff to Visit Jail in Person—Whitewashing.

The sheriff shall visit the jail in person and examine into the condition of each prisoner at least once each month, and it is hereby made

his duty to cause all the cells and rooms used for the confinement of prisoners to be thoroughly whitewashed at least three times in each year. [L. '77, p. 304, § 10; 1 H. C., § 1203.]

§ 10201. [8505.] Prisoner may be Ordered into Solitary Confinement, When.

Whenever any person committed to prison for any cause whatever shall be unruly, or shall disobey any of the regulations established for the management of prisons, the sheriff or keeper may order such prisoner in solitary confinement, and fed on bread and water only, unless other food shall be necessary for the preservation of his health, and no intercourse shall be allowed with such prisoner during such confinement, except for conveyance of food and other necessary purposes, but such period of confinement shall not exceed twenty days for each offense. [L. '77, p. 304, § 11; 1 H. C., § 1204.]

See supra, § 2208, forms of sentence and solitary confinement.

§ 10202. [8506.] Keeper of Jail may have Prisoner's Hair Cropped.

The keeper of any prison may, upon the commitment after judgment of a person convicted of a felony punishable by imprisonment, cause the hair on the head of said prisoner to be closely crop[p]ed and so kept during his term of imprisonment. [L. '77, p. 304, § 12; 1 H. C., § 1205.]

§ 10203. [8507.] Jailer must be an Appointed Deputy—Oath of Office.

The jailer or keeper of the jail, unless the sheriff elect to act as jailer in person, shall be a deputy appointed by the sheriff, and such jailer shall take the necessary oath before entering upon the duties of his office; the sheriff shall in all cases be liable for the negligence and misconduct of the jailer as of other deputies. [L. '77, p. 305, § 13; 1 H. C., § 1206.]

See supra, § 10186.

That portion of this section regarding pay of jailer is omitted as repealed.

§ 10204. City and Town Jails and Workhouses.

Cities and towns shall have authority to acquire, build, operate and maintain jails, workhouses, workshops, stockades and other places of detention and confinement at any place within the territorial limits of the county in which such city or town is situated, as may be selected by the legislative authority of such municipality. [L. '17, p. 346, § 1.]

§ 10205. County Jails, etc.

Counties shall have authority to acquire, build, operate and maintain jails, workhouses, workshops, stockades, and other places of detention and confinement at any place within the limits of such county as may be designated by the county commissioners thereof. [L. '17, p. 346, § 2.]

§ 10206. Contracts Between City and County for Joint Jails, etc.—Employment of Inmates.

Any city or town shall have authority to contract with the county in which such city or town may be located, and such county shall have

authority to contract with any such city or town for the joint acquirement, erection, ownership, control and maintenance of any jail, workhouse, workshop, stockade, or other place of detention and confinement within the limits of any such county and for the care, keep, custody, control, confinement and employment of the city, town or county prisoners heretofore or hereafter convicted of offenses against the laws of the state or of the ordinances of such city or town punishable by fine or by confinement in any such county, city or town jail, in any jail, workhouse, workshop, stockade or other place of detention and confinement so provided by such county, city or town, or which may be so jointly provided by such county, city or town. The legislative authority of any city or town and the county commissioners of any county shall have authority to employ persons so convicted and under sentence upon such public works as may be designated by such county, city or town, or by any contract between same as in this act authorized. [L. '17, p. 346, § 3.]

§ 10207. Joint Authority and Powers.

When such contract shall have been entered into by and between any city or town and county for the joint acquirement, ownership, control and maintenance of any jail, or for the care, keep, custody, control, confinement and employment of any such persons in any jail, workhouse, workshop, stockade, or other place of detention and confinement, the legislative authority of any such city or town and the board of county commissioners of any such county shall have authority acting under and by virtue of any sentence imposed by any court upon any person so convicted to provide for the care, keep, and custody of any such person in any such place of confinement so provided, and to further provide for the employment of such person or persons at or upon such public work as may be designated from time to time by such authority. [L. '17, p. 347, § 4.]

§ 10208. Working Accused Prior to Conviction.

No person now or hereafter accused of an offense shall before conviction be put to any employment while confined in any place of detention herein specified. [L. '17, p. 347, § 5.]

§ 10209. Prisoners Committed by United States.

It shall be the duty of all county sheriffs or other officials having charge of jails to receive and keep in such jail, where room therefor is available, all prisoners committed thereto by process or order issued under the authority of the United States until discharged according to law, the same as if such prisoners had been committed under process issued under authority of the state of Washington, provisions being made by the United States for the support of said prisoners, and any extra guards or attendants required. [L. '17, p. 347, § 6.]

CHAPTER II.

THE STATE PENITENTIARY.

§ 10210. [8508.] Penitentiary at Walla Walla, What Constitutes.

The entire area of lands situated near the city of Walla Walla, donated to the territory of Washington for penitentiary purposes by the people of Walla Walla, together with all structures, buildings, and inclosures thereon, are hereby declared to be, and they shall hereafter be known as the state penitentiary. [L. '91, p. 353, § 1; 1 H. C., § 1141.]

For former laws on the subject of this chapter, see L. '55, pp. 9, 10; L. '57, pp. 32, 33; L. '61, pp. 4—6; L. '63, pp. 498—500; L. '67, pp. 118—124; L. '69, pp. 358—360; L. '71, pp. 80—82; L. '75, pp. 77, 78; L. '83, pp. 82, 83; L. '86, pp. 152—155; L. '88, pp. 158—161 and 164—168.

§ 10211. [8509.] General Duties of Board.

It shall be the duty of the state board of control to determine the necessary officers and employees of the penitentiary, other than those provided for by law, specifying their duties severally and fixing their salaries, to prescribe rules and regulations for the government of the penitentiary, and to revise and change the same from time to time as circumstances may require, and to board and lodge the officers and employees; Provided, the superintendent may make temporary rules in case of emergency, to remain in force until the succeeding meeting of the board. At least two of the board shall visit the penitentiary once in each month, and oftener if necessary, at such time as they may select. The said board shall audit all claims for supplies, service, and expenses of officers, and employees, and all other demands against the penitentiary;

2. To enter, or cause to be entered, on their journal, by the clerk, all official acts, which shall be signed by at least two members of the board.

3. On or before the 1st day of December of each year, to report to the governor the condition of the penitentiary, together with detailed statements of receipts and expenditures, and such suggestions concerning the prisoners as may appear to be necessary and expedient;

4. The board shall also adopt rules and regulations, not inconsistent with the Constitution and laws of the state of Washington, for the government of the board, and may change them at their pleasure. [L. '91, p. 354, § 5; 1 H. C., § 1145.]

See *infra*, § 10794, duties of board of control devolve upon director of business control.

See *infra*, § 10893, state board of control abolished.

Query: To what extent this section is continued in force or repealed by § 10918, *infra*.

"Superintendent" substituted for "warden": See § 10902, *infra*.

See *infra*, § 10899, duties generally.

See *infra*, § 10901, visits every three months.

§ 10212. [8510.] Superintendent—Bond, and Official Term of.

The superintendent of the penitentiary shall take and subscribe an oath or affirmation faithfully to perform the duties of his office, as prescribed by law and by the rules and regulations of the board, and to enter into a bond to the state of Washington in the sum of twenty-five thou-

sand dollars, with two or more sufficient sureties, to be approved by the board and the attorney general of the state, conditioned to the faithful performance of such duties as such officer aforesaid, and he shall hold office four years after such appointment, unless sooner removed for cause by the board. [L. '91, p. 354, § 6; 1 H. C., § 1146; L. '95, p. 342, § 1.]

Adapted; "superintendent" substituted for "warden" in this chapter: See § 10902, *infra*.

See *infra*, § 10902, appointment, salary and term.

§ 10213. [8511.] General Duties of Superintendent—Residence.

The superintendent shall reside at the penitentiary in a house provided and furnished at the expense of the state, as may be ordered by the board, and it shall be his duty—

1. Under the order and direction of the board to prosecute all suits at law or in equity that may be necessary to protect the rights of the state in matters or property connected with the penitentiary and its management, such suits to be prosecuted by the prosecuting attorney of Walla Walla county, in the name of the board of control; and that he be allowed ten dollars per day for each day actually employed by said board: Provided, this amount shall not exceed five hundred dollars per annum;

2. To supervise the government, discipline, and police of the penitentiary, and to enforce all orders and regulations of the board in respect to the penitentiary. He shall keep a registry of the convicts, in which shall be entered the names of each convict, the crime for which he is convicted, the period of his sentence, from what county sentenced, by what court sentenced, his nativity, to what degree educated, an accurate description of his person, and whether he has previously been confined in a prison in this or any other state, and if so where, and how he was discharged;

3. He shall report to the governor before the 20th of each month the names of all prisoners whose terms are about to expire, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits to date of such report, and the date when their date [term] would expire by limitation of sentence;

4. To perform such other duties as may be prescribed by the board of directors. [L. '91, p. 355, § 7; 1 H. C., § 1147.]

See notes to §§ 10211, 10212.

See *infra*, § 10903, furnished with quarters.

Cited in 19 Wash. 76.

§ 10214. [8512.] May Appoint a Clerk—Oath—Bond of.

The state board shall appoint a clerk for the penitentiary, who shall take an oath of office, and enter into a bond to the state, with sureties satisfactory to the board, in the sum of five thousand dollars, conditioned that he will faithfully discharge the duties required of him. The clerk shall hold his office for the period of four years after his appointment, unless sooner removed for cause by the board. [L. '91, p. 355, § 8; 1 H. C., § 1148; L. '95, p. 342, § 2.]

See notes to §§ 10211, 10212.

See § 10902, *infra*, authorizing the board to determine and fix the number and salary of employees.

Under this section the directors, acting in their official capacity, may bring an action in their own names for the benefit of the state upon the official bond of the

warden to recover on account of his defalcation of public funds: *Nye v. Kelly*, 19 Wash. 73, 52 Pac. 528.

§ 10215. [8513.] Accounts, How Kept.

The clerk shall require from the superintendent daily, a statement of his cash receipts and expenditures, and shall keep the financial accounts of the penitentiary and books by the double entry system, and in such manner as will exhibit clearly all the financial transactions of the penitentiary. The clerk shall keep such books by double entry system as will clearly and accurately show the transactions of and between the different departments, and by proper and systematic accounts show accurately expense of each department, and earnings, if any. He shall, by vouchers, requisitions and receipts, provide an absolute check upon each department's transactions. He shall also perform such other duties as may from time to time be required of him by the board. [L. '91, p. 356, § 9; 1 H. C., § 1149; L. '95, p. 342, § 3.]

See notes to §§ 10211, 10212.

See § 10899, authorizing the board to provide a uniform system of keeping accounts, etc.

§ 10216. [8514.] No Intemperate Person shall be Employed—Removal of.

No person shall be appointed to any office or be employed in the penitentiary on behalf of the state, who is in the habit of intemperate use of liquors, and a single act of intemperance shall justify his discharge or removal. [L. '91, p. 356, § 10; 1 H. C., § 1150.]

§ 10217. [8515.] General Power of Removal for Misconduct, etc.

Any officer or employee may be removed by the state board at any time for misconduct, incompetency, or neglect of duty. [L. '91, p. 356, § 11; 1 H. C., § 1151.]

See notes, to §§ 10211, 10212.

See *infra*, § 10902, power of removal.

§ 10218. [8516.] Receipt and Disbursement of Moneys—Penitentiary Fund—Vouchers.

All moneys received or collected by the superintendent by virtue of this act, unless otherwise provided, shall be paid by him into the state treasury to the credit of a fund to be known as the penitentiary fund, at least as often as once per month, excepting so much thereof as may be necessary to pay the expenses and money allowed discharged prisoners, and the current expenses of maintaining and operating the penitentiary, and the expenses of his officers and employees. The superintendent shall require vouchers for all moneys by him expended, and safely keep the same on file in his office at the penitentiary. For all sums of money required to be paid, other than for the uses above named, as well as for said uses, when there is not sufficient money in the hands of the superintendent, drafts shall be drawn on the auditor of state, signed by at

least two members of the board, and the auditor of state shall draw his warrant on the state treasurer, who shall pay the same out of any moneys belonging to the penitentiary fund or appropriated for the use or support of the penitentiary. The amount of all money retained by the superintendent, and the aggregate amount paid out shall be reported quarterly to the auditor of state, and the proper entries shall be made on the auditor's books. [L. '91, p. 357, § 15; 1 H. C., § 1155.]

Sections 10210—10232, 10908, comprise "this act."

See notes to §§ 10211, 10212.

See supra, § 5501, a later enactment, requiring daily payments by state officers authorized to receive or collect money.

§ 10219. [8517.] Superintendent has Control of Revenues.

All revenues of the penitentiary, unless herein otherwise provided, shall be paid to the superintendent, who alone is authorized to receipt for the same and discharge him from liability. When any sum of money is paid to the superintendent he shall cause the same to be properly entered on the books by the clerk. [L. '91, p. 358, § 16; 1 H. C., § 1156.]

See note to last section.

§ 10220. [8518.] Reports of Moneys to be Made to State Auditor.

On payment of any moneys into the state treasury, as provided in this act, the superintendent and state treasurer shall report to the auditor of state the amount so paid, and the state treasurer shall give the superintendent a receipt therefor which receipt shall be filed with the auditor. The superintendent shall report to the auditor of state the amount of money paid into said treasury by him during each month, and shall also report to said auditor of state the amount received and disbursed by him every three months, and during the period for which such report shall be made, which quarterly report shall be signed by the warden and at least two members of the board. [L. '91, p. 358, § 17; 1 H. C., § 1157.]

See note to § 10218, as to "this act."

See notes to §§ 10211, 10212.

§ 10221. [8519.] Employment of Convicts—Manufacture and Sale of Articles.

All convicts may be employed by authority of the board, under charge of the superintendent and such skilled foremen as they may deem necessary in the performance of work for the state, or the manufacture of any article or articles for the state, or the manufacture of which is sanctioned by law. At Walla Walla, at the state penitentiary, no articles shall be manufactured for sale, except jute fabrics and brick. The board is hereby authorized to purchase, from time to time, such tools, machinery, and materials, and to direct the employment of such skilled foremen, as may be necessary to carry out the provisions of this section, and to dispose of the articles manufactured and not needed by the state, for cash,

at private sale, in such manner as provided by law. [L. '91, p. 358, § 18; 1 H. C., § 1158.]

See note to § 10211, *supra*.

See *supra*, § 10190, and notes, employment of prisoners.

See *infra*, § 10223, working convicts, commutation of time.

§ 10222. [8520.] Rules as to Treatment of Prisoners—Insane Convicts.

In the treatment of the prisoners the following general rules shall be observed:—

1. Each convict shall be provided with a bed of straw or other suitable material, and sufficient covering of blankets, and shall be supplied with garments of coarse, substantial material, of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive of good health;

2. No punishment shall be inflicted except by the order and under the direction of [the] superintendent;

3. The superintendent shall keep a correct account of all money and valuables upon the prisoner when delivered at the prison, and shall pay the amount, or the proceeds therefor, or return the same, to the convict when discharged, or to his legal representative in case of his death; and in the case of the death of such convict without being released, if no legal representative shall demand such property within five years, the same shall be paid into the penitentiary fund;

4. The rules and regulations prescribing the duties and obligations of the prisoners shall be printed and hung up in each cell and shop;

5. Each convict when he leaves the penitentiary shall be supplied with the money taken from him when he entered, and which he has not disposed of, together with any sum which may have been earned by him for his own account, allowed to him by the state for good conduct or diligent labor, or may have been presented to him from any source; and in case the prisoner has not funds sufficient for present purposes he shall be furnished with five dollars in money, a suit of clothes costing not more than ten dollars, and transportation by the cheapest route to the place where sentenced from, which shall be void if not used in twenty-four hours, if the prisoner desires to return there, or to any other place of the same cost; and he shall be entitled, if he so elect, to immunity from having his hair cut or from having been shaved for three calendar months immediately prior to his discharge. It shall not be lawful for the officers of the penitentiary to furnish or permit to be furnished to anyone for publication the name of any prisoner about to be discharged. When the superintendent, and such other officers as may be designated by the directors to act with him in such cases, shall be of opinion that any convict is insane, they shall make proper examination, and if they remain of the opinion that such person is insane, the superintendent shall certify the fact to the superintendent of one of the state asylums for the insane, and shall forthwith send such convict to said asylum for care and treatment. If at the expiration of the term of sentence the insane convict is still in the insane asylum, he shall be allowed to remain there until discharged cured. It shall be the duty of the superintendent also to

send to the board a copy of such certificate, and thereafter a statement as to his subsequent acts, regarding the said insane convict. And it shall be the duty of the superintendent of the insane asylum to receive such convict, and keep him until cured. It shall be his duty, upon receipt of such insane convict, to notify the board of the fact, giving name, date, and where from, and from whose hands received. When in the opinion of the superintendent such insane convict is cured of insanity, it shall be his duty to immediately notify the board thereof; and it shall be his duty also to notify the superintendent of the prison from whence he was received, who shall immediately send for, take, and receive the said convict back into the penitentiary, the time passed at the asylum counting as a part of such convict's sentence. Before discharging any convict who may be insane at the time of the expiration of his sentence, the superintendent shall first give notice in writing to a judge of a superior court of the county in which the penitentiary is located, of the fact of such insanity, whereupon said court shall forthwith make an order, and deliver the same to the sheriff of said county, commanding him to remove such insane convict, and take him before said court. Upon receipt of such order it shall be the duty of said sheriff to whom it is directed to execute and return the same forthwith to the court by whom it was issued, and thereupon the said court shall cause proper examination to be made by medical experts, and if it shall satisfactorily appear that such convict is insane, said court shall order him to be confined in one of the insane asylums. [The sheriff shall receive the same compensation as for transferring a prisoner to the penitentiary, and to be paid in the same manner.] If any judge, after having been notified by the superintendent, shall neglect to cause such order to be made as herein provided, or any such sheriff shall neglect to remove any such insane convict as required by the provisions of this section, it shall be the duty of the superintendent to cause such insane convict to be removed before a superior court of a county in which the penitentiary is located, in charge of an officer of the penitentiary, or other suitable person, for the purpose of examination; and the cost of such removal shall be paid out of the state treasury, in the same manner as when removed by the sheriff as herein provided. [L. '91, p. 359, § 19; 1 H. C., § 1159.]

See note to §§ 10211, 10212.

Superseded as to the words in brackets: See § 10920, the board of control to have charge of transferring the insane.

• See supra, § 2176, discharge of criminal insane, on acquittal.

See supra, § 2284, removal of insane convicts to other institutions.

See supra, § 6972, discharge of criminal insane only on order of court of competent jurisdiction, which does not entirely harmonize with this section.

§ 10223. [8521.] Working Convicts—Commutation of Time, etc.

The board of control shall require of every able-bodied convict confined in the penitentiary as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the penitentiary. Every convict who shall have no refraction of the rules and regulations of the penitentiary or laws of the state recorded against him, and who performs in a faithful, orderly

and peaceful manner the duties assigned him, shall be allowed from his term, instead and in lieu of the credits heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of his term, and pro rata for any part of the year where the sentence is for more or less than a year. Each convict shall be entitled to these deductions unless the board of directors shall find that for misconduct or other cause he should not receive them. But if any convict shall commit any assault upon his keeper or any foreman, officer, convict or person, or otherwise endanger life, or shall be guilty of any flagrant disregard of the rules of the penitentiary, or commit any misdemeanor, or in any manner violate any rules and regulations of the penitentiary, he shall forfeit all deductions of time earned by him for good conduct before the commission of such offense, or that, under this section, he may earn in the future, or shall forfeit such part of such deductions as to the board of directors may seem just; such forfeiture, however, shall be made only by the board after due proof of the offense and notice to the offender, nor shall any forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the board shall be sole judges. The board shall have power to restore credits forfeited, for such reasons as to them may seem proper. [Cf. L. '88, p. 55, § 1; L. '91, p. 361, § 20; 1 H. C., § 1160; L. '97, p. 201, § 1.]

See notes to §§ 10211, 10212, *supra*.

See *infra*, § 10271, employment of convicts at rock crushing.

See *infra*, § 10271, employment of convicts on state roads.

§ 10224. [8522.] Superintendent's Report to Governor.

The superintendent of the penitentiary shall report to the governor at least once in three months the names of the convicts who by their faithful performance of duty, good and meritorious conduct, he believes entitled to executive clemency, stating the time of conviction, for what crime convicted, length of sentence, and reasons for favorable consideration; which report shall be kept on file in the governor's office for reference. [L. '97, p. 202, § 2.]

See note to §§ 10211, 10212.

This section does not appear to be covered in the title of the act.

§ 10225. [8523.] Contract for Supply of Water—Power to Erect Buildings.

The board of control shall have power to contract for the supply of water for said penitentiary, upon such terms as said board shall deem to be for the best interests of the state, or furnish water themselves, at their option. The board shall have full power to erect any building or structure deemed necessary by them, or to alter or improve the same, and to pay for the same from the fund appropriated for the use or support of the penitentiary, or from the earnings thereof, without advertising or contracting therefor: Provided, that no buildings or structure the cost of which will exceed three thousand dollars shall be erected or constructed without first obtaining the consent of the governor, secretary, and treasurer of the state, or a majority thereof: Provided, that such expenditure

shall in no instance exceed ten thousand dollars without special appropriation therefor by the state legislature. [L. '91, p. 362, § 21; 1 H. C., § 1161.]

See notes to §§ 10211, 10212.

See *infra*, § 10908, reconstruction of buildings.

See *infra*, § 10909, construction of new buildings.

§ 10226. [8524.] Compensation of Officers and Employees—Restrictions—Penalty.

No officer or employee shall receive, directly or indirectly, any compensation for his services other than that prescribed by the board; nor shall he receive any compensation whatever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any contractor or agent or employee of a contractor. For any violations of the provisions of this section the officer, agent, or employee of the state shall be discharged from his office or service; and every contractor, or employee or agent of a contractor, engaged therein shall be expelled from the penitentiary grounds, and not again permitted within the same as a contractor, agent, or employee. [L. '91, p. 362, § 22; 1 H. C., § 1162.]

See notes to §§ 10211, 10212.

§ 10227. [8525.] Dealings With Prisoners Prohibited—Penalty.

No officer or employee of the state, or contractor or employee of a contractor, shall, without permission of the board of control, make any gift or present to a convict, or receive any from a convict, or have any barter or dealing with a prisoner. For every violation of the provisions of this section the party engaged therein shall incur the same penalty as prescribed in the last preceding section. [L. '91, p. 362, § 23; 1 H. C., § 1163.]

See notes to §§ 10211, 10212.

§ 10228. [8526.] Officers and Employees not to be Interested in Contracts.

No officer or employee of the penitentiary shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by anyone for or on behalf of the penitentiary. [L. '91, p. 363, § 24; 1 H. C., § 1164.]

See, also, § 10907, *infra*.

§ 10229. [8527.] Board's Annual Report to be Printed.

There shall be printed annually, for the use of the penitentiary, five hundred copies of the annual report of the board of control, and the clerk shall annually transmit to each of the state prisons of the United States one copy of such report. [L. '91, p. 363, § 25; 1 H. C., § 1165.]

See notes to §§ 10211, 10212.

See *infra*, § 10899, annual report to governor.

See *infra*, § 10915, biennial report to governor.

§ 10230. [8528.] Bonds of Officers to be Deposited With Secretary of State.

All the bonds of officers and employees under this act shall be deposited with the secretary of state. [L. '91, p. 363, § 26; 1 H. C., § 1166.]

See note to § 10218, as to "this act."

§ 10231. [8529.] Rewards—Power of Board to Offer.

The board shall have power to offer rewards not exceeding two hundred dollars, in the one case for the return of escaped convicts, and to pay the expenses of the apprehension, safekeeping, and return of all escaped convicts by the officers of the penitentiary. They shall certify the amount of reward allowed and expenses incurred to the state auditor, who shall draw his warrant for the amount found due on the state treasurer, who shall pay the same out of the penitentiary fund. [L. '91, p. 363, § 27; 1 H. C., § 1167.]

See note to § 10211.

§ 10232. [8530.] Penalty for Assisting Prisoner to Escape, etc.

Any person who shall unlawfully take or carry, or cause to be taken or carried to the penitentiary, for the use of any person confined therein, any weapon or explosive, shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the penitentiary for life, or any term of years. [L. '05, p. 76, § 1. Cf. L. '91, p. 363, § 28; 1 H. C., § 1168.]

See *supra*, §§ 2343—2346, aiding prisoner to escape.

§ 10233. [8531.] Felony to Provide Means of Escape.

Any person who shall unlawfully take or carry, or cause to be taken or carried to the penitentiary, for the use of any person confined therein, any rope, cord, wire or mechanical tool or device which can be used to attempt an escape, or any opium, morphine or other drug, or who shall aid any prisoner confined therein, in any way to escape, or who shall harbor or conceal any escaped prisoner, shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the penitentiary not more than ten (10) years nor less than one (1) year, or by fine not exceeding fifteen hundred dollars (\$1,500) nor less than one hundred dollars (\$100), or by both fine and imprisonment. [L. '05, p. 76, § 1.]

See references and note to § 10232.

§ 10234. [8532.] Governor to Appoint Chaplain.

There shall be appointed by the governor a chaplain of the state penitentiary who shall hold office for the term of two years, unless sooner removed by the governor. [L. '05, p. 63, § 1.]

§ 10235. [8533.] Duties and Quarterly Reports of Chaplain.

It shall be the duty of the chaplain of the state penitentiary to perform religious services in the prison, at least once every Sabbath, himself, unless prevented by sickness, in which case he may furnish a regularly ordained preacher, and to attend to the spiritual wants of the convicts; to

visit the convicts in their cells for the purpose of giving them religious and moral instructions, and to devote at least one hour in each week day and the afternoon of each Sunday to such instructions; to take charge of the library and to take care that no improper books are introduced into the cells of the convicts, and if any such books shall be found either in the cells or in the possession of the convicts, to take away and return the same to the superintendent, and for the purpose of properly discharging these duties, to visit weekly each cell in the prison; to visit daily the sick in the hospital; to make quarterly report to the governor, stating the number of convicts that have been instructed during the last quarter, the branches of education in which they shall have been instructed, the text-books used in such instruction, and the progress made by the convicts, and to note especially, any cases in which an unusual progress has been made by a convict; to make an annual report on or before the first day of November in each year, to the governor, which report shall be attested by his oath or affirmation to be just and true, relative to the religious and moral conduct of the prisoners during the year ending with the last day of the previous September, stating therein what services he has performed and the results, if any, of his instructions, and he shall append thereto, as far as practicable in tabular form, a statement exhibiting the number of the convicts in prison on the last day of such September, and at what age convicted, specifying separately the number born in the United States, foreigners, and of what country, and the nativity of their parents, the number that cannot read, that can read only, read and write, well educated, classically educated, temperate, intemperate, healthy, diseased, whether employed at the time of the commission of the crime, counties where convicted, occupation, sentence, how many times recommitted and social state: Provided, that at no time shall such chaplain visit any portion of the state penitentiary or any convict therein without the consent of the superintendent; and provided further, that all reports of such chaplain shall be made to the superintendent. [L. '05, p. 63, § 2.]

§ 10236. [8534.] Salary and Office of Chaplain.

He shall receive for his services a yearly salary of twelve hundred dollars (\$1,200) which shall be paid in the same manner as that of other state officers. He shall be supplied with an office in the state penitentiary, which shall be furnished with fuel and light. [L. '05, p. 64, § 3.]

See Const., Art. I, § 11, no public money to be appropriated for religious worship.

§ 10237. [8535.] No Distinction as to Denominations.

Nothing in the last section contained shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to prisoners. [Cd. '81, § 3297.]

"Last section" refers to Code of 1881, § 3296, superseded by §§ 10234—10236.

§ 10238. [8536.] Transportation of Prisoners—Costs.

The costs of transporting prisoners convicted and sentenced to imprisonment in the state penitentiary by the laws of this state shall be paid

for by the state as hereinafter provided. [L. '88, p. 54, § 1; 1 H. C., § 1178.]

See *infra*, § 10920, transportation of convicts, etc., under supervision of state board of control.

§ 10239. [8537.] Term of Confinement Commences, When.

When a person is sentenced to imprisonment in the penitentiary, his term of confinement therein commences from the day of his delivery at such prison to the proper officer thereof, and no time during which such person is voluntarily absent from such penitentiary can be estimated or counted a part of the term for which such person was sentenced. [L. '88, p. 57, § 6; 1 H. C., § 1181.]

See *supra*, §§ 1745, 1746, commencement of term, appeal, effect.

§ 10240. [8538.] Record of Credits of Prisoner Sentenced for Life.

A record of the credits for good behavior shall be kept in the case of any convict undergoing a sentence in the penitentiary for life, as though said convict were undergoing a sentence for a term of years, such record to be certified by the superintendent to the governor, in the case of an application for pardon by said convict. [L. '88, p. 56, § 3; 1 H. C., § 1182.]

See *supra*, §§ 2195, 2281, indeterminate sentences.

See *supra*, § 2280, suspending sentences.

See *supra*, § 2282, boards to determine period of confinement and grant paroles.

See *supra*, § 2223, pardons.

See *infra*, § 10247, parole.

§ 10241. [8539.] Governor may Purchase Literature for Use of Convicts.

The governor of said state [shall] be and he is hereby authorized to purchase newspapers, magazines, or books for the use of the convicts in the state penitentiary to the amount of fifty dollars annually; and he is hereby authorized to purchase a number of volumes of the Seaside and Franklin Square Library, to the amount of twenty-five dollars. [Cd. '81, p. 3295; 1 H. C., § 1183.]

Part of this section is manifestly temporary.

§ 10242. [8540.] Governor to Visit Penitentiary—Expenses, How Paid.

The governor of the state shall visit the penitentiary at least once a year, and as much oftener as he shall deem necessary, and shall be allowed all actual and necessary traveling expenses incurred by reason of his said visits, and he shall certify the same to the state auditor. [L. '88, p. 168, § 1; 1 H. C., § 1184.]

Cited in 19 Wash. 637.

§ 10243. [8541.] Conviction of Felony to be Certified to State Auditor.

In all convictions for felony punishable by imprisonment in the state penitentiary, the clerk of the superior court in which such conviction shall have occurred shall forthwith, after sentence, certify the fact of such conviction to the state auditor, giving date of such sentence, the name

and age (if known) of the party, the nature of the crime for which convicted, and the duration of the sentence imposed by the court. [L. '83, p. 71, § 1; 1 H. C., § 1185.]

§ 10244. [8542.] Information as to Prisoners—Superintendent to Report, etc.

It shall be the duty of the superintendent or keeper of the state penitentiary, immediately upon the expiration of the time for which any prisoner confined in the state prison is convicted, or upon the death, pardon, release, or escape of any such prisoner, to give official notice thereof to the state auditor. It shall be the duty of said superintendent or keeper of the prison, on or before the first day of January, 1884, to make out a detailed report to the state auditor, to be filed in his office, showing—

1. The names of all prisoners committed to the penitentiary from and after the first day of June, 1878;
2. The county from which committed;
3. The nature of the crime for which convicted;
4. The duration of the sentence, also the names and number of all those who have died, who have been discharged, or who have escaped from said penitentiary since the first day of June, 1878. [L. '83, p. 71, § 2; 1 H. C., § 1186.]

See *supra*, § 10213, general duties of superintendent.

See *infra*, § 10910, record of inmates kept by board of control.

§ 10245. [8543.] Penalty for Neglect or Refusal to Give Such Information.

Should the superintendent or keeper of the state penitentiary neglect or refuse to give notice to the state auditor, as provided in the last preceding section of this chapter, he shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be subject to a fine in any sum not exceeding five hundred dollars, in any court of competent jurisdiction, and shall stand committed until said fine is paid. [L. '83, p. 72, § 3; 1 H. C., § 1187.]

§ 10246. [8544.] Record to be Kept by State Auditor, and to Embody What Facts.

It shall be the duty of the state auditor to keep a public record of all convictions of parties sentenced to the state penitentiary, such record to embody the full data of facts reported to him under sections 10243 and 10244. [L. '83, p. 72, § 4; 1 H. C., § 1188.]

CHAPTER III.

PARDONS AND PAROLES.

§ 10247. [8545.] Power of Governor to Parole.

The governor shall have the authority, upon recommendation of the superintendent of the state penitentiary, under such rules and regulations as the governor may prescribe, to suspend the sentence of, issue a parole to, and permit to go at large within the state, any convict who now is or hereafter may be imprisoned in the state penitentiary, under a sentence other than a life sentence, or for the crime of murder, who may have served one year for the crime for which he was convicted, and who has not previously served one term of imprisonment in any penal institution for felony. [L. '99, p. 36, § 1.]

See *supra*, § 2223, pardons.

See *supra*, § 2282, paroles by boards.

See *infra*, § 10291, paroles from reformatory.

In General: See Remington's Digest, Pardons, §§ 1—4, and cases cited.

Under Ballinger's Code, section 6997, authorizing conditional pardons to be granted by the governor, on such limitations as he may think proper, the provision that he may "issue his warrant to carry into effect such pardon," is not limited to the issuance of the warrant granting the pardon, but reposes power in the governor to issue a warrant revoking a pardon which expressly provides that violation of its conditions shall cause its revocation, in the absence of any other statutory provision for determining when

the conditions are violated: *Spencer v. Kees*, 47 Wash. 276, 91 Pac. 963.

By Ballinger's Code, sections 204—208, establishing the state board of pardons, the legislature did not intend to abrogate the pardoning powers of the governor under Constitution, Article III, section 9, and recommendations of the board are not binding on the governor: *State ex rel. Rogers v. Jenkins*, 20 Wash. 78, 54 Pac. 765.

Revocation for condition broken, of conditional pardon or parole, without notice or hearing. **L. B. A.** 1915F, 541.

§ 10248. [8546.] Governor may Withdraw Parole.

Every such convict while on parole shall remain in the legal custody and under the control of the governor and shall be subject at any time to be taken back within the inclosure of the prison from which he was thereby permitted to go at large, for any reason that shall be satisfactory to the governor, and at his sole discretion and full power to retake and return any such paroled convict to the prison from which he was permitted to go at large, is hereby expressly conferred upon the governor, whose written order, when duly attested by the secretary of state, shall be a sufficient warrant authorizing all officers named therein to return to actual custody in the prison from which he was permitted to go at large, any such paroled convict, and it is hereby made the duty of all officers to execute said order the same as an ordinary criminal process. [L. '99, p. 37, § 2.]

See, also, *infra*, § 10292.

§ 10249. [8547.] Time of Sentence Runs With Parole—Breaking of Parole.

This act shall not be construed to in any sense operate as a release of any convict paroled under its provisions, but simply as a suspension of his sentence and a permit granted to such convict to go without the in-

closure of the prison. At the expiration of the time for which he was originally sentenced, if he has faithfully complied with his parole the original sentence shall be held to be revoked, and said convict shall stand as fully pardoned of the crime for which he was convicted. If, however, any convict while on parole shall go beyond the limits of the state without written permission from the governor he shall be held to be an escaped convict and treated as such and retaken. [L. '99, p. 37, § 3.]

See *infra*, § 10292, retaking prisoners paroled from state reformatory.

If a prisoner rearrested after release on a conditional pardon, is entitled to trial in habeas corpus proceedings to determine whether he has violated the conditions of the pardon, he cannot complain if he is awarded a trial before the court and the burden of proof is placed on the state: *Spencer v. Kees*, 47 Wash. 276, 91 Pac. 963.

A prisoner who is pardoned upon condition that he should be placed under the

care and surveillance of Dr. B., and that he should remain with and be supported by his relatives as long as he lives, is shown to have violated the conditions of the pardon where he remained with his relatives only a few days, was permitted to support himself, was married, visited houses of prostitution and frequently became intoxicated: *Spencer v. Kees*, 47 Wash. 276, 91 Pac. 963.

CHAPTER IV.

PENITENTIARY PRODUCTS AND EMPLOYMENT OF CONVICTS.

§ 10257. [8555.] Labor Employed in Manufacture of Jute Fabrics and Brick.

In the manufacture of jute fabrics and brick the board of control shall employ such skilled labor as is found necessary and as many convicts as possible. [L. '91, p. 202, § 1; 1 H. C., § 1170.]

See notes to § 10211.

Validity of statute requiring goods made by convict labor to be so marked. *Ann. Cas.* 1913B, 817.

§ 10258. [8556.] Revolving Fund for Purchase of Jute, etc.

The sum of fifty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to provide a permanent revolving fund for the purchase and delivery at the state penitentiary of jute, clay and other materials for the manufacture of jute and other fabrics and brick. [L. '91, p. 202, § 4; 1 H. C., § 1173; L. '93, p. 212, § 1.]

See appropriations, L. '97, p. 199.

Provisions relating to the revolving fund seem to be superseded by § 5501, *supra*, requiring daily payments into the state treasury.

Cited in 13 Wash. 321.

§ 10259. [8557.] Payment from Fund, How Made.

Payments from the revolving fund shall be made by the state treasurer upon warrants drawn by the state auditor upon the certified accounts of the directors of the state penitentiary audited by him. [L. '91, p. 203, § 5; 1 H. C., § 1174; L. '93, p. 212, § 2.]

See note to last section.

§ 10260. [8558.] Use of Fund.

All money taken from the revolving fund shall be used exclusively in the purchase of and the payment of freights on jute, clay and other material and fuel delivered at the state penitentiary to be used in the manufacture of jute and other fabrics and brick thereat. [L. '93, p. 212, § 3.]

§ 10261. [8559-1.] Purchase of Jute and Other Fabrics.

The state board of control is authorized and empowered to purchase jute and other products and fabrics for use in the state penitentiary; and the jute and other fabrics and products manufactured at the state penitentiary shall be sold for such prices as shall in the judgment of the board be for the best interests of the state. [L. '11, p. 645, § 1.]

See *infra*, § 10794, duties devolve upon director of business control.

See *infra*, § 10893, board of control abolished.

§ 10262. [8559-2.*] Sale to Farmers, Oyster and Wool Growers and in Open Market.

The jute grain sacks and other fabrics and products manufactured at the state penitentiary shall be sold directly to the farmers, oyster growers or wool growers of the state of Washington, who are actually engaged in farming, oyster culture and wool growing, and no sacks shall be sold within the state of Washington to any person not engaged in farming or oyster culture and wool growing: Provided, however, that the state board of control may, between June 1st and January 1st of each year, dispose of any of the penitentiary products, including grain sacks, in the open market of the world at such prices as they shall deem to be for the best interests of the state. The products sold to residents of the state of Washington shall be sold under such rules, regulations and terms as may be provided by said board, for cash: Provided, that the said board of control may in its discretion accept in lieu of cash a certificate of deposit upon any state or national bank doing business in the state of Washington, payable not later than the fifteenth day of December of the current year, said certificate of deposit to bear interest at the rate of three per cent per annum. The products of the penitentiary shall be apportioned and sold to the individual farmers, oyster growers and wool growers within each county as near as may be pro rata according to the quantities of grain, oysters and wool produced by said farmers, oyster growers and wool growers during the current year, as determined by the state board of control. All payments for jute products and other fabrics and products shall be made to the superintendent of the state penitentiary, who is alone authorized to receipt therefor, and he shall keep a correct account of all sales, showing to whom sold, when sold, the quantity of each article sold, and the amount paid; and the superintendent of the penitentiary shall submit a transcript of said account of sales to the legislature through the board at each session thereof, and shall report the amount of such sales monthly to the state auditor. [L. '17, p. 213, § 1; L. '11, p. 645, § 2.]

See notes to § 10261.

§ 10263. [8559-3.] Authority of Board.

The state board of control is authorized to purchase jute and other raw material for use in the penitentiary in the open market of the world, upon such terms as shall be for the best interests of the state; and the said board is authorized to make such freight arrangements for the transportation of such raw material and jute as may be for the best interests of the state; and the board of control in conjunction with the superintendent of the penitentiary may appoint a purchasing agent or agents for the purchase of such raw material or jute, and an agent or agents for the sale and disposition of the manufactured product, which agents shall be under the direction and exclusive jurisdiction of the state board of control, and the compensation and necessary expenses of such agents shall be paid out of the proper fund provided by law for the penitentiary. [L. '11, p. 646, § 3.]

See notes to § 10261.

§ 10264. [8559-4.] Prices—Profit Allowed—Distribution.

The price at which all grain sacks manufactured at the penitentiary shall be offered for sale shall be fixed by the state board of control at such time in each year as the board shall consider proper, which price shall not exceed the estimated cost of manufacturing thereof plus a profit of twelve and one-half per cent on said estimated cost; and the board shall apportion all sacks manufactured among the grain growing counties of the state of Washington, pro rata, according to the quantity of grain produced in each of said counties, during the current year as determined by the state grain inspector, and it shall be the duty of the state grain inspector to ascertain and determine approximately the yield of grain in each of said counties for said purpose. Such estimate shall be furnished to the board on or before December 31st, of each year, and it shall be the duty of the board immediately following such apportionment to cause notice to be published in an official newspaper in each of the said counties, in which notice of the quantities of grain sacks apportioned to such county and the price fixed for the sale of the same shall be stated, and the manner and time of application shall be set forth: Provided, however, that such apportionment shall not be necessary from June 1st to January 1st of each year, at which time the grain sacks manufactured at the penitentiary may be sold in the open market of the world. [L. '11, p. 646, § 4; L. '13, p. 98, § 1.]

See notes to § 10261.

§ 10265. [8559-5.] Application for Sacks.

Any resident of the state of Washington actually engaged in growing grain within the state may apply for as many of said sacks as he shall require for his individual use, which application shall be made upon blanks prescribed and furnished by the board. In making the application he shall state, under oath, the acreage of grain sown by him for that season, the probable aggregate yield therefrom, that the sacks applied for are for his individual use, and such other facts as the board of control may require. All such applications for grain sacks must be made

and filed with the superintendent of the state penitentiary prior to the first day of April of each year. In the event that all of the sacks assigned to any one county shall not be applied for and sold, the state board of control shall apportion the amount not applied for in such county pro rata to such counties as may have therein an excess of applications in proportion to the excess, and if there shall be no excess the sacks not applied for shall not be sold until the first day of June, during which time any resident of the state of Washington, actually engaged in growing grain within said state may apply for such sacks in accordance with the terms of this act and upon the conditions herein stated, and after June first any sacks not sold may be sold anywhere in the open market of the world on such terms and prices as the board of control shall deem to be for the best interests of the state. [L. '11, p. 642, § 5; L. '13, p. 99, § 2.]

§ 10266. [8559-6.] Payment.

Upon receiving notice of the acceptance of his application, wholly or in part, the applicant shall forthwith transmit to the superintendent of the state penitentiary one-tenth of the purchase price of said sacks, and the balance before delivery and not later than September 1st. If payment in full is not made before September 1st, in cash or by certificate of deposit, as provided for in this act, the one-tenth paid as above shall be forfeited to the state of Washington. [L. '11, p. 647, § 6.]

§ 10267. [8559-7.] Board Make Rules.

The state board of control shall make all rules and regulations consistent with this act, and necessary to carry into effect the purposes thereof, and shall provide a uniform and complete form of application for sacks and furnish the same free of cost to all applicants therefor. [L. '11, p. 648, § 7.]

See notes to § 10261.

§ 10268. [8559-8.] Construction.

This act shall be construed liberally with reference to the powers and duties of the warden of the state penitentiary and the state board of control, so that the best interests of the state will be subserved thereby. [L. '11, p. 648, § 8.]

§ 10269. [8568.] Payment of Monthly Receipts into Revolving Fund.

On or before the fifth day of each month the superintendent of the state penitentiary shall pay into the state treasury, to be placed in the revolving fund, the moneys received by him during the preceding month from the sales of jute and other fabrics and brick, and he shall at the same time report to the state auditor the amounts and their sources so paid in. [L. '91, p. 203, § 6; 1 H. C., § 1175; L. '93, p. 213, § 6.]

See supra, § 5501, state officers, authorized to receive money to make daily payments into state treasury.

§ 10270. [8569.] Use of Revolving Fund.

None of the money received from the sale of jute and other fabrics and brick, and turned into the revolving fund, shall be used for any other

purpose than the purchase of materials and fuel, and the payments of freights thereon, until after said revolving fund shall contain fifty thousand dollars. [Cf. L. '91, p. 202, § 4; 1 H. C., § 1173; L. '93, p. 213, § 7.]

See note to § 10258.

§ 10271. [8570.] Convict Labor may be Employed at Rock-crushing, etc.

All convicts confined in the state penitentiary at Walla Walla may be employed under authority of the state board of control, under charge of the superintendent of the penitentiary, or of such other persons in the employ of the state as the state board of control shall direct, in the crushing, preparation or handling of rock or other materials for roads or streets. Such labor shall be performed at such place or places in this state as the said state board of control shall direct. [L. '03, p. 264, § 1.]

See notes to § 10261.

See infra, §§ 10276—10279, employment on state roads.

Constitutional objections to convict labor contracts. **L. R. A.** 1916D, 660.

Right of lessee of convicts to sublet them or assign contract. **16 Ann. Cas.** 743.

Impairment of obligation of convict labor contract. **3 A. L. R.** 1671.

Right of person illegally hired out as convict laborer as against lessee. **Ann. Cas.** 1912A, 269.

§ 10272. [8571.] Purchase of Materials, Tools, etc.

Said state board of control shall have power and authority to purchase out of the revolving fund of the state penitentiary all necessary materials, tools and implements and to do all things necessary to carry out the spirit and intent of this act. [L. '03, p. 264, § 2.]

See notes to § 10261.

"This act" refers to §§ 10272—10274.

See infra, § 10906, purchase of supplies, notice, bids, etc.

§ 10273. [8572.] Sale of Crushed Rock.

Said state board of control shall have authority to sell and dispose of such crushed rock or other materials for roads and streets in such manner and for such price as they shall deem most advantageous for the state. [L. '03, p. 264, § 3.]

See notes to § 10261.

§ 10274. [8573.] Receipts Paid into Revolving Fund.

All moneys derived from the sale of such crushed rock or other road materials shall be paid into the revolving fund of the state penitentiary. [L. '03, p. 264, § 4.]

§ 10275. [8574.] May Use Brick in Construction of Penitentiary Buildings.

The state board of control is hereby authorized in its discretion, to use brick manufactured at the state penitentiary for the enlargement, or the construction of any buildings used in connection with the state penitentiary. [L. '07, p. 402, § 1.]

See notes to § 10261.

§ 10276. [8575.] Employment of Convicts on State Roads.

All convicts confined and not otherwise employed shall be employed under authority of the state board of control in charge of the superintendent of the penitentiary or of such other persons in the employ of the state as the state board of control shall direct, in the building of state roads in this state. All expenses of whatsoever nature incurred through such employment shall be paid from the fund appropriated by the state legislature for the construction of the particular road or roads upon which such convicts may be employed. The places where and the manner in which work shall be performed upon state roads by such convicts shall be designated by the state highway board. [L. '07, p. 173, § 1.]

See notes to § 10261.

See, also, § 10271, *supra*.

§ 10277. [8575-1.] Employment of Convicts on Roads.

Whenever there are persons confined in the state penitentiary who are physically able to perform manual labor upon the public highways, and who shall not be engaged in other work required by the state board of control, the same may be employed upon the construction and improvement of the public highways within the state. [L. '13, p. 347, § 1.]

See notes to § 10261.

See *infra*, § 10786, duties of highway commissioner devolve upon director of public works.

§ 10278. [8575-2.] Monthly List of Eligibles.

The board of control shall monthly certify to the state highway commissioner the number of persons in the institution named who may be used for the work authorized under this act, and the state highway commissioner shall, whenever possible, use such persons in the building or repair of public roads. [L. '13, p. 347, § 2.]

See notes to § 10261.

§ 10279. [8575-3.] Supervision of Work and Men.

The work done, as in this act provided, shall be under the direction and supervision of the state highway commissioner, but the control and management of all the persons taken from the said penitentiary shall be under the supervision of the state board of control. The expense of the care, maintenance and transportation of all persons so taken from said institution to work upon the roads shall be paid out of the fund or funds authorized to be used upon the particular road upon which such work is being done: Provided, that a part of such expense equalizing twenty-five cents per day per person so employed shall be paid out of the appropriation for the maintenance of the particular institution from which such persons are taken. [L. '13, p. 347, § 3.]

See notes to § 10261.

See *infra*, § 10786, duties of highway commissioner devolve upon director of public works.

CHAPTER V.

STATE REFORMATORY.

§ 10280. [8576.] Establishment.

There is hereby established the Washington state reformatory, the same to be located, constructed, equipped and managed in the manner and for the purpose in this act hereinafter provided [in Snohomish County]. [L. '07, p. 385, § 1.]

"This act" embraces this chapter and § 2195.

See *infra*, § 10299, state training school, formerly state reform school.

The omitted portions of the next section provided for a site in Snohomish County.

§ 10281. [8577.] Board of Managers—Powers and Duties.

The board of managers [hereinafter mentioned] shall have power to construct such additional buildings as may be necessary and equip the same, make such improvements as may be required from time to time and shall perform such other duties as shall be required of them by law and shall have general charge and supervision of said Washington state reformatory and shall conduct the same strictly upon nonpartisan principles. [L. '07, p. 385, § 2.]

See *infra*, § 10794, duties devolve upon director of business control.

See *infra*, § 10893, board of managers abolished.

Portions of this section relating to site and buildings omitted as temporary.

Cited in 86 Wash. 617.

The legislature, by outlining, in broad and general terms this and following sections, the powers and duties of the board of managers of the state reformatory, without any complete system of specific rules or regulations, has by necessary implication accorded to the officers all those powers which experience has proven necessary, with a wide latitude of discretion,

including the power to take and preserve, and send to police officers elsewhere, in good faith, photographs and physical measurements of prisoners, in order to prevent escape and to facilitate recapture, reformation, and the investigation of past records required by statute, and as an aid in enforcing the habitual criminal law: *Hodgeman v. Olsen*, 86 Wash. 615, 150 Pac. 1122, L. R. A. 1916A, 739.

§ 10282. [8579.] Board—Meetings—Duties—Annual Report—Rules.

. . . . The managers shall make an annual report thereon to the governor on or before the first day of October of each year. And in said annual report the board shall give the classification of all prisoners, showing their ages, term of sentence, offense committed, cause of crime, habits, education and industrial training and pursuits, and such other information and recommendations as they may deem best for the information of the legislature. The board shall prepare rules for its own government and for the government of the Washington state reformatory in accordance with the provisions of this act. [L. '07, p. 386, § 4.]

Part of this section omitted as superseded.

"This act": See note to § 10280.

See notes to § 10281.

§ 10283. [8580.] Superintendent — Appointment, Term, etc.—Physician and Assistants.

The board of managers as soon as they may deem it necessary shall appoint as superintendent a person who possesses the ability and qualifi-

cations to successfully carry on the industries of the reformatory and who possesses the executive ability essential for the proper management of the officers and other employees under his jurisdiction and to enforce and maintain proper discipline in every department; said superintendent shall hold his office during the pleasure of the board. Any vacancy shall be filled by appointment by such board as hereinbefore provided. They shall also appoint a physician and surgeon in chief, and the necessary medical assistants, including a druggist and assign to them the necessary office room, and fix the salaries and duties of such officers who shall serve during the pleasure of the board. [L. '07, p. 387, § 5.]

See notes to § 10281.

Cited in 86 Wash. 617.

§ 10284. [8581.] Officers, Guards, and Employees—Compensation.

It shall be the duty of the superintendent by and with the advice and consent of the board of managers to appoint such subordinate officers, guards and employees as the number of prisoners or the needs of the institution may from time to time require; said officers, guards and employees shall receive as compensation salaries fixed by the board of managers not to exceed those now provided by law for similar services by officers, guards and employees, performing like duties in the Washington penitentiary, and all salaries shall be fixed on or before the first day of April each year and no changes shall be made in the salaries to be paid excepting at the time prescribed in this section. [L. '07, p. 387, § 6.]

See notes to § 10281.

§ 10285. [8582.] Superintendent, Salary and Bond of—Chaplain.

The superintendent shall receive an annual salary to be fixed by the board of managers. He shall give bond, with good and sufficient sureties, approved by the governor, in the sum of ten thousand (\$10,000) dollars, conditioned upon the faithful performance of duty. The said board of managers shall also appoint a chaplain for said Washington state reformatory, who shall perform such duties as may be prescribed by the board of managers. He shall receive as compensation for his services a sum to be fixed by the board of managers, and shall be assigned suitable office room quarters in said reformatory, by the board of managers. He shall devote his entire time to the duties of his office. [L. '07, p. 387, § 7.]

See notes to § 10281.

§ 10286. [8583.] Quarters, Board, etc., for Officers and Employees.

The superintendent, the chaplain, the physician and the chief engineer of the reformatory shall be furnished with quarters, household furniture, board, fuel and lights for themselves and their families; and the board of managers may by unanimous vote, when in their opinion the institution would be benefited by so doing, extend this privilege to any other officer. The word "family" or "families" used in this section shall be construed to mean only the wife and minor children of an officer. Employees shall be furnished with quarters and board for themselves. [L. '07, p. 388, § 8.]

§ 10287. [8584.] Labor by Inmates—Transfer of Inmates of Penitentiary.

The labor necessary for the construction of buildings and shops and the manufacture of materials therefor, and the inclosure of the grounds of said reformatory as well as such other improvements as in the judgment of the board of managers may be required shall be performed by the inmates as far as practicable; and it shall be the duty of the warden of the Washington penitentiary at Walla Walla and the board of control to select from the number of inmates of said penitentiary, such convicts as shall, as nearly as may be, come within the requirements of section 10288, as to age and crime, and transfer the same to the Washington state reformatory when requested by the board of managers thereof. [L. '07, p. 388, § 9.]

"Warden," the superintendent: See § 10902, *infra*.

§ 10288. [8585.] Certain Criminals to be Sentenced to Reformatory.

The said board of managers shall receive all male criminals between the ages of sixteen and thirty, and who shall be legally sentenced to said Washington state reformatory on conviction of any criminal offenses, in any court having jurisdiction thereof; and it shall be incumbent upon any such court to sentence to the Washington state reformatory any such male person between the ages of sixteen and twenty-one convicted of a crime punishable by imprisonment in the Washington state reformatory, and any court, in its discretion may sentence to the Washington state reformatory any such male person between the ages of twenty-one and thirty, so convicted, whom said court may deem amenable to reformatory methods: Provided, that no person convicted of murder in the first or second degree and no person who shall have been convicted and sentenced more than three times either to fine or imprisonment shall be sentenced or transferred to said Washington state reformatory. [L. '07, p. 388, § 10.]

See notes to §§ 10261, 10281.

See *supra*, § 2195, indeterminate sentence to reformatory, being § 13 of this act.

Cited in 75 Wash. 203.

This section wherein no discretion is given to the court to sentence to the penitentiary male persons between the ages of sixteen and thirty is superseded by the act of 1909, §§ 2277 and 2278, *supra*: *Pellissier v. Reed*, 75 Wash. 201, 134 Pac. 813.

Commitments to Reformatory: See *Remington's Digest*, *Reformatories*, §§ 1, 2; *Mason, In re*, 3 Wash. 609, 28 Pac. 1025; *Barbee, In re*, 19 Wash. 306, 53 Pac. 155; *State v. Rasch*, 24 Wash. 332, 64 Pac. 531; *State v. Packenham*, 40 Wash. 403, 82 Pac. 597.

§ 10289. [8586.] Discipline—Credit and Payment of Earnings—Forfeitures.

The discipline to be observed in said Washington state reformatory shall be reformatory, and the managers shall have power to employ such means of reformation for the improvement of the inmates as they may deem expedient. The labor imposed upon inmates, or industrial pursuits prescribed for the employment of their time, shall also be at the discretion of the board of managers, except that what is known as the contract system of prison labor shall not be employed. The superintendent is hereby authorized to place to the credit of each prisoner, such amount

of his earnings as the board of managers may deem equitable and just, taking into consideration the character of the prisoner, the nature of the crime for which he is imprisoned, and his general deportment: Provided, that such credit shall in no case exceed twenty per cent of his earnings, and the funds thus accruing to the credit of any prisoner shall be paid to him or his family, at such times and in such manner as the board of managers may deem best: Provided, that at least twenty-five per cent of such earnings shall be left for and paid to such prisoner at the time of his restoration to citizenship: And provided, further, that the superintendent may, with the approval of the managers, by way of punishment for violation of rules, and of propriety, or any other misconduct, cancel such portion of such credit as may be deemed best by him. [L. '07, p. 389, § 11.]

See notes to § 10281.

See *supra*, § 2282, board to determine period of confinement.

For § 13 of this act, see *supra*, § 2195, indeterminate sentence to reformatory.

§ 10290. [8587.] Transfer of Prisoners to Penitentiary.

The board of managers shall have power to transfer, with the written consent of the governor of the state, to the Washington penitentiary, any prisoner, who subsequent to his committal, shall be shown to have been at the time of his conviction more than thirty years of age, and may also so transfer any apparently incorrigible prisoner whose presence in the Washington state reformatory appears to be seriously detrimental to the well being of the institution. [L. '07, p. 390, § 14.]

See notes to § 10281.

See *supra*, § 2278, power to transfer prisoners.

§ 10291. [8588.] Governor may Parole on Recommendation.

The governor shall have the authority to establish rules and regulations under which prisoners within said Washington state reformatory may be allowed to go upon parole, in legal custody, and under the control of the governor, and subject at any time to be returned to said reformatory; but no prisoner shall be considered eligible to parole, and no application for parole shall be considered by the governor until such prisoner shall have been recommended as worthy of such consideration by the superintendent, and chaplain of said Washington state reformatory, and in no case shall any prisoner be released on parole unless there is in the opinion and judgment of the governor reasonable ground to believe that he will if released be and remain at liberty without violating the law, and that his release on parole is not incompatible with the welfare of society, and such judgment shall be based upon the record and character of the prisoner as established in the reformatory, considering also his previous record, nature and character of the crime committed, and all such other facts as the governor may be able to obtain bearing upon the advisability of parole or refusal of the same. [L. '07, p. 390, § 15.]

See *supra*, § 2282, paroles by board.

§ 10292. [8589.] Reimprisonment of Paroled Convicts.

The governor shall have full power to retake and to reimprison any convict so upon parole and his written order shall be sufficient warrant for all officers named in it to authorize such officers to arrest and return to actual custody any conditionally released or paroled prisoner and should such paroled prisoner be in the custody of an officer of the law, either under an order of arrest or by virtue of a conviction and sentence for any crime other than manslaughter or murder, then in such case said written order shall be a sufficient warrant under which said paroled prisoner may be taken into the custody of such officer of said Washington state reformatory; and it is hereby made the duty of all officers named in such order to arrest and return to actual custody any conditionally released or paroled prisoner. [L. '07, p. 391, § 16.]

Cited in 75 Wash. 205.

§ 10293. [8590.] Board of Managers may Adopt Rules and Regulations.

The board of managers shall have the power to make all rules and regulations necessary and proper for the employment, discipline, instruction, education and removal of all prisoners of said Washington state reformatory. [L. '07, p. 391, § 17.]

See notes to § 10281.

Cited in 86 Wash. 617.

§ 10294. [8591.] Selection and Transfer of Convicts from Penitentiary.

Whenever the board of control shall have completed the construction of the buildings herein provided of the Washington state reformatory, same shall then be turned over to the board of managers who shall have authority to make requisitions upon the managers of the Washington penitentiary, who shall select the number required from the youthful, well-behaved and most trusty class of convicts, whose record shall be subject to the approval of said board making such requisition, and transfer them to said reformatory for the purpose of labor, education and treatment, under the rules and regulations thereof; and the board of managers are hereby authorized to receive and detain during the term of their sentence to the Washington penitentiary, such prisoners so transferred; and the laws applicable to the convicts in the Washington penitentiary so far as they relate to the commutation of imprisonment for good conduct, shall be applicable to said convicts. [L. '07, p. 392, § 18.]

See notes to §§ 10261, 10281.

§ 10295. [8592.] Business Management Vested in Board of Control.

The business management and the purchase of supplies and the sale of products and manufactures, together with the auditing and keeping of all accounts pertaining thereto shall be vested in the state board of control. [L. '07, p. 392, § 19.]

See notes to §§ 10261, 10281.

§ 10296. [8593.] Reformatory Treatment—Register of Prisoners.

It shall be the duty of said board of managers to maintain such control over all prisoners committed to their custody, as shall prevent them

from committing crime, best secure their self support and accomplish their reformation. When any prisoner shall be received into the Washington state reformatory upon direct sentence thereto, they shall cause to be entered in a register the date of said admission, the name, age, nativity and nationality, with such facts as can be ascertained of parentage, or early education and social influences as seen to indicate the constitutional defects and tendencies of the prisoner, and the best probable plan of treatment. Upon such register shall be entered quarterly, or oftener, minutes of observed improvement or deterioration of character, affecting the standing or situation of such prisoner, the circumstances of the final release and any subsequent facts of the personal history which may be brought to their knowledge. [L. '07, p. 392, § 20.]

See notes to § 10281.

Cited in 86 Wash. 618.

§ 10297. [8594.] System of Credits for Inmates—Discharge by Governor.

The board of managers shall under a system of marks, or otherwise fix upon a uniform plan under which they shall determine what number of marks or what credit shall be earned by each prisoner sentenced under the provisions of this act as to the conditions (of increased privileges, or of release from their control) which system shall be subject to revision from time to time. Each prisoner so sentenced shall be credited for good personal demeanor, diligence in labor or study, and for the results accomplished, and recharge for derelictions, negligence or offenses. The board of managers shall establish rules and regulations by which the standing of each prisoner's account of marks shall be made known to him as often as once a month. When it appears to the governor that there is a strong or reasonable probability that any prisoner on parole may live and remain at liberty without violating the law, and his release is not incompatible with the welfare of society he may thereupon in his discretion grant an absolute release to such prisoner, and in his discretion restore such prisoner to citizenship. Nothing herein contained shall be construed to impair the power of the governor to grant a pardon or commutation in any case. [L. '07, p. 393, § 21.]

"This act": See note to § 10280.

See notes to § 10281.

See *supra*, § 2223, pardons by governor.

See *supra*, § 2282, board to determine period of confinement and grant paroles.

§ 10298. [8595.] Sentences for Definite Time not Void.

If through oversight, or otherwise, any person be sentenced to imprisonment in said Washington state reformatory for a definite period of time, said sentence shall not for that reason be void; but the person so sentenced shall be entitled to the benefit and subject to the liabilities of this act, in the same manner and to the same extent, as if sentence had been in the terms required by section 2195 of this code, and in such case said managers shall deliver to such offender a copy of this act and written information of his relation to said managers. [L. '07, p. 393, § 22.]

See *supra*, § 2195, indeterminate sentence to reformatory.

CHAPTER VI.

THE STATE TRAINING SCHOOL.

§ 10299. [8596.] Establishment of.

A reform school [shall] be and is hereby established, to be known as the Washington state training school. [L. '90, p. 271, § 1; 1 H. C., § 1207; L. '07, p. 171, § 1.]

In the earlier act, this was called the "Washington state reform school."

For attempted legislation on this subject under title of "public school system," see *supra*, § 4624, and note.

Constitutionality of statute concerning juvenile reformatories. 120 *Am. St. Rep.* 952.

§ 10300. [8597.] Aim and Purpose of.

Said school to be for the keeping and reformatory training of all youths between the ages of eight and eighteen who are residents of the state of Washington, and who, on presentation to the presiding officer of said school by an accompanying officer, parent, or guardian, shall be accompanied by a certificate of commitment from a court legally authorized to make such commitment. [L. '90, p. 272, § 2; 1 H. C., § 1208.]

This section harmonizes with § 4625, *supra*. See note to § 4624.

§ 10301. [8598.] Bills to be Certified, Audited, etc.—Payment of.

All bills against the state for supplies or material furnished or labor performed in connection with said school shall be certified to by the president and secretary of the board of control, and such board shall not certify to any bill or sanction the payment of any account for labor performed, or material or supplies furnished, except the same shall have been duly contracted for and the provisions of the contract fully complied with. All bills and accounts of said school shall be audited by the state auditor, who shall draw a warrant on the state treasurer for the amount so certified to by the president and secretary of the board, which warrant shall state on its face the person in whose favor it is drawn, and for what particular purpose it is drawn; but the auditor shall draw no warrant for any bill or account connected with said school, except said bill or account be certified to according to the provisions of this act. [L. '90, p. 274, § 10; 1 H. C., § 1215.]

See *infra*, § 10794, duties devolve upon director of business control.

See *infra*, § 10893, state board of control abolished.

The present force of this section is doubtful. So far as inconsistent with § 8931 of Rem. & Bal. Code, it was repealed by § 10918.

§ 10302. [8599.] Employment of Director and Matron—Appointments.

The superintendent shall have immediate control of the male department of said school, and shall, by and with the consent of the board, employ a matron, who shall have immediate control of the female department of the school, and the superintendent shall also appoint such other officers and teachers as may be necessary for the management of the school. [L. '90, p. 275, § 13; 1 H. C., § 1217.]

Part of this section is omitted as temporary.

"Director" changed to "superintendent" in this and the following sections on the authority of § 10902, *infra*.

§ 10303. [8600.] Superintendent to Give Bond.

The superintendent, before entering upon the duties of his office, shall execute and file with the board a bond, with good and approved sureties, in the sum of five thousand dollars, conditioned for the faithful performance of his duties as superintendent of said training school. [L. '90, p. 275, § 15; 1 H. C., § 1219.]

See note to last section.

See notes to § 10301.

§ 10304. [8600½.] Duties and Powers of Superintendent.

The superintendent shall be present at all meetings of the board after his appointment and qualification, and shall there confer with the board regarding the management and interests of the school. He shall have entire supervision of the school, subject, however, to the control of the board, and shall hold his office during the pleasure of the same. [L. '90, p. 276, § 16; 1 H. C., § 1220.]

See notes to § 10301.

See note to § 10302.

The present force of this section is doubtful: See §§ 10899, 10902, *infra*.

The requirement to attend all meetings of the board originally applied to "directors'" meetings, and cannot now be operative.

See *infra*, § 10902, term of office four years.

§ 10305. [8601.] Investigations by Board—Inmate to be Returned, When.

It shall be the duty of the board to investigate any and all complaints made against the superintendent, matron, or any employee of said training school, and for good and sufficient reason remove the person against whom such complaint shall have been made. The board shall further investigate any and all charges may [made] by the superintendent against any inmate or inmates of the school, and if, after the investigation of such charges, any inmate or inmates of said school shall be found incorrigible, unmanageable, or detrimental to the best interest of the school, such inmate or inmates, as the case may be, shall be returned to the court which made the commitment. [L. '90, p. 276, § 17; 1 H. C., § 1221.]

§ 10306. [8602.] Separation of Sexes.

Said state training school shall consist of two departments, one for the male and one for the female inmates, and the two departments shall be entirely separate. The matron shall be directly accountable to the superintendent for the management of the female department of the school. [L. '90, p. 276, § 18; 1 H. C., § 1222.]

Superseded by provisions for state school for girls. See § 4631, *supra*.

§ 10307. [8603.] Branches to be Taught and Instruction Given—Nature of.

All the branches taught in the public schools of the state shall be taught in the state training school, and the inmates shall be taught and trained in morality, temperance, and frugality, and they shall also be

instructed in the different trades and callings of the two sexes, as far as possible in the scope of the institution. [L. '90, p. 276, § 19; 1 H. C., § 1223.]

See § 4630, *supra*, this section duplicated. See note to § 4624.

§ 10308. [8604.] Superintendent to Make Report, When.

The superintendent shall, at the close of each year, make a full and complete report to the board of the condition, number, and standing of the inmates of the school, as well as the number received and the number dismissed during the year, and he shall give such further information as the board may require. [L. '90, p. 276, § 21; 1 H. C., § 1225.]

CHAPTER VII.

TRUANT SCHOOLS.

§ 10309. [8605.] Establishment in Cities of Fifty Thousand.

In cities having a population of fifty thousand inhabitants or more, there may be established, maintained and conducted, one or more parental or truant schools for the purpose of affording a place of confinement, discipline, instruction and maintenance of children of compulsory school age who may be committed thereto in the manner hereinafter provided. [L. '03, p. 109, § 1.]

This chapter was not included in the "school code" of 1909, while provisions relating to the state training school were included. Treating both as "reformatories" to which commitments are made by courts, and therefore outside of the title of that act, "a uniform system of public schools" (see note to § 4518), this chapter is still in force. Otherwise it may be repealed by L. '09, p. 376, §§ 2 and 3.

Cited in 113 Wash. 624.

§ 10310. [8606.] Sites Purchased or Leased—Location—Furnishing.

For the purpose of establishing such school or schools, sites may be purchased and buildings constructed or premises rented in the same manner as in the case of public schools in such cities. And in addition school or schools may be established and site or sites may be purchased and buildings constructed or premises rented outside of said cities: Provided, no school or schools shall be established, or sites be purchased, any buildings constructed or premises rented which shall be distant more than ten miles from the city so establishing or erecting said schools or purchasing said site or sites: And, provided further, that no school shall be erected at or near any penal institution. And it shall be the duty of the board of directors to furnish all such schools which are by them at any place established, with such furniture, fixtures, apparatus and provisions as may be necessary for the maintenance and operation thereof. [L. '03, p. 109, § 2.]

§ 10311. [8607.] Superintendent, Officers, Teachers, etc.

The board of directors may also employ a superintendent and all other necessary officers, agents and teachers and shall prescribe the methods of discipline and the course of instruction, and shall exercise the same powers

and perform the same duties as is prescribed by law for the management of other schools. [L. '03, p. 110, § 3.]

§ 10312. [8608.] Religious Services.

No religious instruction shall be given in such school, but the board of directors may make suitable regulations so that the inmates may receive religious training, either by allowing religious services to be established in the institution, or by arranging for attendance elsewhere. [L. '03, p. 110, § 4.]

§ 10313. [8609.*] Petition to Superior Court for Commitment.

It shall be the duty of any truant officer or agent of such board of directors to petition and any reputable citizen of the city may petition the superior court, to inquire into the case of any child of compulsory school age, who is not attending school, or who has been guilty of habitual truancy, or incorrigibility, and the petition shall also state the name, if known, of the father and mother of said child, or the survivor of them; and if neither father nor mother of said child is living or cannot be found in the county or if their names cannot be ascertained, then the name of the guardian if there be one known, and if there be a parent living whose name can be ascertained, or guardian, the petition shall show whether or not the father or mother or guardian consents to the commitment of child to such parental or truant school. Such petition shall be verified by oath upon the belief of the petitioner and upon being filed the judge of the superior court shall have such child named in the petition brought before him for the purpose of determining the application contained in such petition. But no child shall be committed to such school who has ever been convicted of any offense punishable by confinement in any penal institution. Any child so received from the juvenile court shall be subject to the other provisions of this act and may at any time, by order of the school directors be returned to the juvenile court and shall not thereafter be returned to the parental school without the consent of the directors of such school district. [L. '19, p. 708, § 1; L. '03, p. 110, § 5.]

§ 10314. [8610.] Procedure—Notice of Hearing.

Upon the filing of such petition the clerk of the court shall issue a writ to the sheriff of the county directing him to bring such child before the court; and if the court shall find that the material facts set forth in the petition are true, and in the opinion of the court such child is a fit person to be committed to such parental or truant school, an order shall be entered that such child be committed to such parental or truant school, to be kept there until he or she arrives at the age of fourteen years, unless sooner discharged in the manner hereinafter set forth. Before the hearing aforesaid, notice in writing shall be given to the parent or guardian of such child if known, of the proceedings about to be instituted, that he or she may appear and resist the same if they so desire. [L. '03, p. 110, § 6.]

§ 10315. [8611.] Parents to Provide Clothing.

It shall be the duty of the parent or guardian of any child committed to this school to provide suitable clothing upon his or her entry into such school and from time to time thereafter as it may be needed, upon notice in writing from the superintendent or other proper officer of the school. In case any parent or guardian shall refuse or neglect to furnish such clothing the same may be provided by the board of school directors, and such board may have an action, in the name of said directors, against such parent or guardian of said child to recover the cost of such clothing with ten (10) per cent addition thereto. [L. '03, p. 111, § 7.]

§ 10316. [8612.] Rules and Regulations by Board of Education—Parole.

The board of education of such city shall have power to establish rules and regulations under which children committed to such parental or truant schools may be allowed to return home upon parole, but to remain while upon parole in the legal custody and under control of the officers and agents of such school, and subject at any time to be taken back within the inclosure of such school by the superintendent or any authorized officer of such school except as hereinafter provided; and full power to enforce such rules and regulations to take any such child upon parole is hereby conferred upon the board of school directors. No child shall be released upon parole in less than four weeks from the time of his or her commitment nor thereafter until the superintendent of such parental or truant school shall have become satisfied from the conduct of such child that if paroled, he or she will attend regularly the public or private school to which he or she may be sent by his or her parents or guardian, and shall so certify to said board of school directors. [L. '03, p. 111, § 8.]

§ 10317. [8613.] Monthly Reports—Final Discharge.

It shall be the duty of the principal or other person having charge of the school to which such child so released on parole may be sent to report at least once each month to the superintendent of the parental or truant school stating whether or not such child attends school regularly, and obeys the rules and requirements of said school, and if such child so released upon parole shall be regular in his or her attendance at school and his or her conduct shall be satisfactory for a period of one year from date on which he or she was released upon parole, he or she shall then be finally discharged from the parental or truant school and shall not be committed thereto except upon petition as hereinbefore provided. [L. '03, p. 111, § 9.]

§ 10318. [8614.] Violations of Parole.

In case any child released from said school upon parole as hereinbefore provided shall violate the conditions of his or her parole at any time within one year thereafter, he or she shall upon the order of the board of school directors as hereinbefore provided, be taken back to such parental or truant school and shall not be again leased upon parole within the period of three months from the date of such entry; and if he or she shall violate the conditions of a second parole he or she shall be recom-

mitted to such parental or truant school, and shall not be released therefrom on parole until he or she shall remain in such school at least one year. [L. '03, p. 112, § 10.]

§ 10319. [8615.] Incurrigibles Sent to Reformatory.

In any case where a child is found to be incorrigible and his or her influence in such school to be detrimental to the interests of the other pupils, the board of directors may authorize the superintendent or any officer of the school to represent there [these] facts to the superior court by petition, and the court shall have power to commit such child to some reformatory institution. [L. '03, p. 112, § 11.]

Probate Law. See §§ 1371—1715-10.

Procedure. In civil actions, see §§ 143—1277.

Appeals to the supreme court, see §§ 1716—1754.

In criminal actions, see §§ 1925—2252.

In justice's court, see §§ 1755—1924.

In probate, see § 1371 et seq.

Prohibition. See § 1027.

Promissory Notes. See "Bills and Notes."

Property. See "Real Property."

Adverse claims to property levied upon, see §§ 573—577.

Rule of descent, see §§ 1341—1363.

Prosecuting Attorneys. See §§ 113—116; "Counties," § 4127.

Provisional Remedies. See §§ 647—784.

Publications. Official, see § 253-1.

Public Archives Commission. See "State and State Boards," § 10953.

Public Debt. See "Bonds"; "Finance"; "Municipal Corporations"; etc.

TITLE LXX.

PUBLIC IMPROVEMENT CONTRACTS.

10320. Contracts—Reserve fund—Lien for labor or supplies. 10322. Foreclosure of liens—Limitation of actions.
10321. Time for full payment.

§ 10320. Contracts—Reserve Fund—Lien for Labor or Supplies.

That contracts for public improvements or work by the state, or any county, city, town, district, board, or other public body, shall provide, and there shall be reserved from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum equal to fifteen per cent (15%) of such estimates, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work. Said fund shall be retained for a period of thirty (30) days following the final acceptance of said improvement or work as completed, and every person performing labor or furnishing supplies towards the completion of said improvement or work shall have a lien upon said fund so reserved, provided such notice of the lien of such claimant shall be given in the manner and within the time provided in section 1161 of this Code as now existing and in accordance with any amendments that may hereafter be made thereto: Provided, however, that where in any improvement or work the contract price shall exceed two hundred thousand dollars (\$200,000), but ten per cent (10%) shall be reserved on estimates in excess of said sum or where the aggregate of previous estimates equals or exceeds said amount. The provisions of this act shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith. [L. '21, p. 657, § 1.]

§ 10321. Time for Full Payment.

That after the expiration of thirty (30) days following the final acceptance of said improvement or work, and the expiration of the time for the filing of lien claims, as herein provided, said reserve, or all amounts thereof in excess of a sufficient sum to meet and discharge the claims of materialmen and laborers who have filed their claims, as provided for in section 10320, together with a sum sufficient to defray the cost of such action and to pay attorneys' fees, shall be paid to said contractor. [L. '21, p. 658, § 2.]

§ 10322. Foreclosure of Liens—Limitation of Actions.

Any person, firm or corporation filing a lien claim against said reserve fund shall have four (4) months from the time of the filing of claims against said fund in which to bring an action for the foreclosure

PUBLIC LANDS—PUBLIC OFFICERS.

of such lien. The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it. In the event the lien claimant fails to bring an action within the time provided for and limited herein, the said reserve fund shall be discharged from the lien of said claimant and the moneys so held shall be forthwith paid to the contractor: Provided, however, that the limitation of four (4) months provided for herein shall not be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure against said fund is sought. [L. '21, p. 658, § 3.]

“Chapter,” refers to this and the two preceding sections.

Public Lands. See “Lands of the State,” § 7797.

Public Libraries. See “Libraries, Museums, and Historical Society,” § 8226.

Public Officers. See “Officers”; “State Boards”; “State Officers.”

Public Service. See “Public Utilities and Railroads.”

TITLE LXXI.
PUBLIC PRINTER AND PRINTING.

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CHAPTER I.—PUBLIC PRINTER.

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CHAPTER I.
PUBLIC PRINTER.

§ 10323. [8616.] Appointment of Public Printer.

The office of public printer is hereby created, which office shall be filled by appointment, by the governor, and who, when appointed, shall hold office at the pleasure of the governor, until his successor is appointed and qualified. [L. '05, p. 332, § 1.]

§ 10324. [8617.] Bond.

Before entering upon the duties of his office, the public printer shall execute to the state of Washington, a good and sufficient bond in the sum of ten thousand dollars, conditioned for the faithful and punctual performance of all the duties of his office. Such bond shall be approved by the governor and filed with the secretary of state. [L. '05, p. 333, § 2.]

§ 10325. [8618.*] Duty of Printer—Printing by State Institutions.

The public printer shall print and bind the Session Laws, the journals of the two houses of the legislature, all bills, resolutions, documents and other printing and binding of either the senate or house, as the same may be ordered by the legislature; and such forms, blanks, record books and printing and binding of every description as may be ordered by all state officers, boards, commissions and institutions, and the supreme court and officers thereof, as the same may be ordered on requisition, from time to time, by the proper authorities: Provided, this act shall not apply to the printing of the supreme court reports: And provided further, that where any institution of the state may become equipped with facilities for doing

such work, it may do any printing for itself, or for any other state institution, which may be practical to the extent of such facilities, and when requested by the governor. [L. '17, p. 510, § 1; L. '15, p. 60, § 2. Cf. L. '05, p. 333, § 3.]

§ 10326. [8619.] Supervision—Requisition for Work Ordered.

All printing and binding shall be done under the general superintendence of the authorities ordering the same, and when completed shall be delivered to such authorities, who shall sign receipts in duplicate therefor: Provided, however, that before the public printer shall execute any printing or binding for any office, board, commission or institution, the proper officer thereof shall apply for, and, if such printing and binding is found to be necessary and proper, they shall be furnished with requisitions in duplicate for such printing and binding approved by the governor, who shall also approve all bills for printing or binding before the same are paid. [L. '05, p. 333, § 4.]

§ 10327. [8620.] Duplicate Bills for Each Job.

Upon the delivery of work and receiving a receipt therefor the public printer shall make out, and deliver to the secretary of state a bill in duplicate therefor, stating what the book, work or job is when the requisition therefor was received by him and when the same was finished and delivered, and specify particularly by item everything charged for in such bill, giving the amount and the price charged for each separate item as hereinafter specified, and the aggregate amount charged for such job or work, together with the number of copies thereof printed and delivered, and with the original requisition issued by the governor for such job or work attached. One copy of such bill shall have attached a copy of the book, job or work herein mentioned and a receipt from the officer receiving such work, and together with the original requisition of the governor shall remain on file in the office of the secretary of state. No bills shall cover more than one book, report, blank or job of any kind. [L. '05, p. 333, § 5.]

§ 10328. [8621.*] State Printing Expert—Salary—Register—Bills—Allowance.

The secretary of state is hereby authorized to appoint some competent person, who has had a practical experience in the printing business, and who has a knowledge of accounting, who shall be designated "state printing expert," whose duties shall be prescribed by the secretary of state. He shall hold his office during the pleasure of the secretary of state and shall perform such other duties as may be required by the secretary of state. He shall receive for his services the sum of eighteen hundred dollars per annum, the same to be paid in monthly payments out of any appropriation made for that purpose, in the same manner as payments are made to state officers and employees, and to be charged upon the books of the secretary of state as an expense account for auditing the state printing and binding accounts.

All bills shall be numbered, and the secretary of state shall register the same in a book designated as "Register of Public Printing," which shall be so ruled and printed as to show the cost of composition, press-

work, binding, stock used and the class of printing ordered and charged to the several departments, boards and commissions ordering the same. Immediately after the registration of such bill the secretary of state shall designate on the duplicate of said bill, such item or items as he shall disallow in whole or in part, and shall certify thereon to the state auditor the amount by him allowed and upon presentation of such duplicate together with the duplicate requisition issued by the governor therefor, with the approval of the governor covering the items listed thereon, the state auditor shall issue a warrant therefor on the state treasurer, payable out of any funds appropriated for that purpose: Provided, that the state auditor may include in one warrant the aggregate amount of any number of bills as audited and certified by the secretary of state when such bills are payable out of the same funds. [L. '17, p. 510, § 2; L. '05, p. 334, § 5.]

§ 10329. [8622.*] Classification and Rates of Compensation.

For the purpose of providing for the compensation of the public printer for his services, the public printing shall be divided into the following classes, and be paid for as herein stated:

FIRST CLASS. The bills, resolutions, and other matters that may be ordered by the legislature, or either branch thereof, in bill form, shall constitute the first class, and shall be printed on half sheet cap paper, weighing not less than twelve pounds to the ream of 14x17 inches in small pica type; each page to contain not more than forty-four lines of said matter of the usual length of forty pica ems, and the lines shall be successively numbered, with a nonpareil slug between each line; and the same shall be measured as solid matter at single price when lines are not underscored, and when more than five lines on any one page are underscored, at price and one-half; and every fraction of a page shall be measured as a full page, but no blank pages shall be counted or paid for. The compensation to be paid for printing of the first class shall be as follows:

Composition, 55 cents per one thousand ems.

Presswork, 60 cents for the first one hundred impressions of a form, and 18 cents for each subsequent one hundred impressions thereof; a form to consist of two pages, or fraction thereof in any one bill form.

SECOND CLASS. The second class shall consist of printing and binding of the journals of the senate and house of representatives, and the annual and biennial reports of the several state officers, state commissions, boards and institutions, with the exception of the reports of the attorney general and the governor's message to the legislature, which shall be printed and bound in the same style as heretofore. Said journals and reports shall be printed on what is known as machine finish book paper weighing not less than fifty pounds to the ream of 25x38 inches, and set in brevier, or what is known as eight point type, with a six to pica lead between each line, and without unnecessary blanks, broken pages or paragraphs. All communications, resolutions, reports of committees, messages and similar documents making up a part of said journals to be set in nonpareil or what is known as six point type, with a six to pica lead between each line. All tabular matter to be set in nonpareil or what is

known as six point type; the type matter for a page to be $4\frac{1}{2} \times 7\frac{1}{2}$ inches, which is to include all running heads and foot-notes. All reports are to be 6×9 inches when trimmed. The general style of all reports are to be the same as those printed in 1918, and the general style of the journals of the house and senate of the session of 1917 shall be followed in the printing and binding of the journals hereafter. There shall be no duplicates of reports or parts of reports printed except by permit of the governor. The compensation to be paid for printing of the second class shall be as follows:

Composition, 72 cents per one thousand ems, which shall include proof-reading, make-up and lockup of forms ready for the press, and there shall be no extra charge made therefor unless alterations are made from original copy.

Presswork, 55 cents for the first one hundred impressions of a form, which shall include all make ready, and 18 cents for each subsequent one hundred impressions thereof, a form to consist of eight pages.

THIRD CLASS. The third class shall consist of all reports, communications, and all other documents that may be ordered printed in book form by the legislature or either branch thereof, and all reports, books, pamphlets, and other like matters printed in book form required by all state officers, boards, commissions and institutions shall be printed in such form and style, and set in such size type, and printed on such grade of paper as may be desired by the state officer, board, commission or institutions ordering same, and which they think will best serve the purpose for which said work is intended. The compensation to be paid for printing of the third class shall be as follows:

Composition, 72 cents per one thousand ems, which shall include proof-reading, make-up and lockup ready for the press, and there shall be no extra charge made therefor unless alterations are made from original copy.

Presswork, 55 cents for the first one hundred impressions of a form, which shall include all make ready, and 18 cents for each additional one hundred impressions thereof. When a form in any class contains fifty per cent or more of half-tones or engravings, and same are printed on enamel book paper, there shall be an allowance of thirty per cent additional to the above presswork scale. A form to consist of eight standard size pages, or a sheet 19×25 inches.

FOURTH CLASS. The fourth class shall consist of the Session Laws, and shall be printed and bound in the same style, size of page and form as the Session Laws published by this state heretofore, with similar marginal notes; the size of the type to be eleven point for the laws or body of the book and six point for the marginal notes and index, and shall be printed on machine finish book paper weighing not less than 60 pounds to the ream of 25×38 inches. The compensation to be paid for printing for the fourth class shall be as follows:

Composition, 72 cents per one thousand ems, with marginal notes measured in the type in which they are set separate from the body of the page, said price shall include proof-reading, make-up and lockup ready for the press, and there shall be no extra charge made therefor unless alterations are made from the original copy.

Presswork, 55 cents for the first one hundred impressions of a form, which shall include all make ready, and 18 cents for each subsequent one hundred impressions thereof, a form to consist of eight pages.

Reprints of the Session Laws, when authorized by law, shall be printed and paid for as fourth class printing.

FIFTH CLASS. The fifth class shall consist of the printing of all stationery, blanks, record books and circulars, and all printing and binding required by the respective state officers, boards, commissions and institutions not covered by classes one, two, three and four, and the rate and compensation to be paid therefor shall be as follows:

Composition, 75 cents per one thousand ems, with a minimum charge of 75 cents for each individual job which shall cover proof-reading, make-up and lockup ready for the press, and there shall be no extra charge made therefor unless alterations are made from original copy: Provided, that all job work set in larger than eleven point type shall be measured and charged for as eleven point type.

Presswork, 50 cents for the first one hundred impressions of a form, and 15 cents for each subsequent one hundred impressions thereof, a form to consist of one side of the sheet on which the job is printed and delivered. [L. '19, p. 76, § 1; L. '05, p. 334, § 6; L. '17, p. 511, § 3.]

§ 10330. [8622½.*] Reprinting from Standing Type, Rates.

Whenever required by law or by the legislature, or either branch thereof, or by any state officer, board, commission or institution the public printer shall keep the type used in printing any matter forming a part of classes one, two, three and four standing for a period not exceeding sixty days for use in reprinting such matter, and in case a reprint is had shall charge not to exceed 25 cents per one thousand ems for the use of the type so kept standing. [L. '19, p. 80, § 2; L. '07, p. 398, § 1.]

Cited in 57 Wash. 440, 655, 657.

§ 10331. [8623.] Measurements.

All measurements of composition shall be based on the published rule of the international typographical union. [L. '05, p. 336, § 7.]

§ 10332. [8624.*] Rates for Binding, Time Work, etc.

Compensation for binding on all classes of work shall be under and according to the following schedule:

Standard size pages shall be 6x9 inches. A signature shall consist of sixteen pages or necessary fraction thereof.

For pamphlets containing one signature or less, including folding, gathering, stitching, covering and trimming, for one thousand finished pamphlets \$4.75, and for each additional signature or fraction thereof \$1.60 for each one thousand finished pamphlets.

For pamphlets containing more than twelve and not more than eighteen signatures, including item as above, for one thousand finished pamphlets, \$35.

For case covered bound books, cloth or full sheep or skiver, including folding, gathering, sewing on three bands, forwarding and finishing, stamping and trimming complete and finished as follows:

Per volume of not over six signatures, 30 cents.

Per volume over six sections and not over twelve sections, 35 cents.

Per volume over twelve sections and not over eighteen sections, 40 cents.

Per volume over eighteen sections and not over twenty-four sections, 45 cents.

Per volume over twenty-four sections, 5 cents for each additional six sections or fraction thereof.

For gathering inserts to be bound in, per thousand inserts 50 cents; inserts in closed folds, per thousand inserts \$1.50.

Tipping: On outside of section, per one thousand \$1.25; on center of section, per one thousand \$1.50; cut in on section, per one thousand \$2.00.

Gathering miscellaneous items not covered in binding schedule as above, 25 cents for each one thousand sections or pieces.

Miscellaneous items of work not covered in schedule to be charged for at current commercial rates less a discount of 25 per cent.

All time work not covered by the above described work shall be paid for at the rate of \$1.25 per hour.

All ruled work to be paid for at the rate of \$1.75 per hour for time of machine and attendants. [L. '19, p. 80, § 3; L. '05, p. 336, § 8; L. '17, p. 514, § 4.]

§ 10333. [8625.*] Printer to Furnish Stock—Charged to State.

The public printer shall furnish all paper, stock and binding materials required in all public work and shall charge the same to the state, as the same is actually used, at the actual price at which same was purchased plus five per cent for waste, insurance, storage, and the handling of same. Whenever a piece of work is delivered to the state, the public printer shall make and file in the office of the secretary of state an affidavit stating the amount of material actually used in said piece of work and the actual value of same, calculated at the wholesale price at which the same was purchased. [L. '17, p. 516, § 5; L. '05, p. 337, § 9.]

See supra, § 8147, legislative supplies, how purchased.

§ 10334. [8626.*] Material Bills.

The public printer shall also file in the office of the secretary of state all bills for material purchased by him for state work, accompanied by his affidavit that same is true and correct, and that said bills show the true amount actually paid therefor. [L. '17, p. 516, § 6; L. '05, p. 337, § 10.]

CHAPTER II.

PUBLIC PRINTING FOR MUNICIPALITIES, ETC.

§ 10335. Work to be Done in State—Exception.

All printing, binding and stationery work executed for or on behalf of any county, city, town, port district or school district in this state shall be executed within the state, except as hereinafter provided, and all proposals, requests or invitations to submit bids, prices, or contracts for, and all contracts for such work shall so stipulate: Provided, that whenever it shall be established that any such work cannot be executed within the state or that the lowest charge for which it can be procured within the state, exceeds the charge usually and customarily made to private individuals and corporations for work of similar character and quality, or that all bids for such work or any part thereof are excessive and not reasonably competitive, the officer or officers of any such municipal corporation shall have power to have said work to be executed outside the state. [L. '19, p. 157, § 1.]

§ 10336. Allowance of Claims for Printing.

No bill or claim for any such work shall be allowed by any officer or officers of any such municipal corporation or be paid out of the funds thereof, unless it shall appear that such work was executed within the state or that the execution thereof within the state could not have been procured, or procured at reasonable and competitive rates, and no action shall be maintained against any such municipal corporation or its officers upon any contract for any such work unless it shall be alleged and proven that such work was executed within the state or that the bids received therefor were unreasonable or not truly competitive. [L. '19, p. 157, § 2.]

§ 10337. Contracts Outside State—Conditions.

All contracts for such work to be executed outside the state as hereinabove provided, shall provide and require that such work shall be executed under conditions of labor and employment which shall substantially conform to the laws of this state respecting hours of labor and the minimum wage scale for women and minors, and the rules and regulations promulgated by the Industrial Welfare Commission of the state of Washington regarding conditions of employment, hours of labor and minimum wages, and the violation of such provision of any contract shall be ground for cancellation thereof. [L. '19, p. 158, § 3.]

§ 10338. Inferior Quality.

Nothing in this act shall be construed as requiring any public official to accept any such work of inferior quality or workmanship. [L. '19, p. 158, § 4.]

Public Schools. See Education.

Public Terminal Warehouses. See Warehouses.

PUBLIC UTILITIES AND RAILROADS.

TITLE LXXII.

PUBLIC UTILITIES AND RAILROADS.

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CHAPTER I.

PUBLIC SERVICE COMMISSION LAW.

§ 10339. [8626-1.] Short Title.

This act shall be known as the "Public Service Commission Law," and shall apply to the public services herein described and the commission hereby created. [L. '11, p. 538, § 1.]

Cited in 76 Wash. 639; 78 Wash. 205; 80 Wash. 169, 328, 654; 83 Wash. 135; 88 Wash. 569; 89 Wash. 605; 94 Wash. 285; 97 Wash. 599; 98 Wash. 231; 101 Wash. 609; 103 Wash. 43, 45, 74; 111 Wash. 295; 113 Wash. 685.

POWERS AND PROCEEDINGS OF THE COMMISSION IN GENERAL—Carriers Subject to: See Remington's Digest, Carr., § 2, and cases cited.

Charges of Carriers, Validity of Regulation: See Remington's Digest, Carr., § 3, and cases cited.

Powers Conferred: See Remington's Digest, Carr., § 3-1, and cases cited.

Proceedings to Establish, and Remedies: See Remington's Digest, Carr., § 3-2, and cases cited.

Reasonableness of Rates: See Remington's Digest, Carr., § 3-3, and cases cited.

Appeal and Review: See Remington's Digest, Carr., § 3-4, and cases cited.

Companies Affected: See Remington's Digest, Carr., § 4, and cases cited.

Reciprocal Demurrage: See Remington's Digest, Carr., § 5, and cases cited.

Preferences and Discrimination: See Remington's Digest, Carr., § 6, and cases cited.

Contracts in Violation of Regulation: See Remington's Digest, Carr., § 7, and cases cited.

COMMERCE—Power to Regulate in the States: See Remington's Digest, Commerce, § 1, and cases cited.

Rules of Interstate Commerce Commission: See Remington's Digest, Commerce, § 2, and cases cited.

Transportation of Goods, Charges: See Remington's Digest, Commerce, § 3, and cases cited.

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CONSTITUTIONAL LAW—POLICE POWER—Regulation of Occupations and Reasonableness Thereof: See Remington's Digest, Const. Law, §§ 48, 49, and cases cited.

LIBERTY OF CONTRACT—Power to Choose: See Remington's Digest, Const. Law, § 57, and cases cited.

OBLIGATION OF CONTRACTS—Power to Fix Rates: See Remington's Digest, Const. Law, § 75, and cases cited.

PRIVILEGES AND IMMUNITIES AND EQUAL PROTECTION—Grants of Special Privileges and Nature of Discriminations: See Remington's Digest, Const. Law, §§ 100, 104, and cases cited.

GAS COMPANIES—Regulations: See Remington's Digest, Gas, § 2, and cases cited.

Charges: See Remington's Digest, Gas, § 3, and cases cited.

Regulation of Trade or Business: See Remington's Digest, Const. Law, § 116, and cases cited.

RAILROADS—Control and Regulation—Power and Duties in General: See Remington's Digest, R. R., § 1, and cases cited.

Procedure and Order: See Remington's Digest, R. R., § 2, and cases cited.

Judicial Review: See Remington's Digest, R. R., § 3, and cases cited.

Facilities for Shipments: See Remington's Digest, R. R., § 46, and cases cited.

Accommodations at Stations: See Remington's Digest, R. R., § 47, and cases cited.

Train Service: See Remington's Digest, R. R., § 48, and cases cited.

Proceedings to Compel Operation: See Remington's Digest, R. R., § 49, and cases cited.

Companies and Persons Liable to Regulation: See Remington's Digest, R. R., § 50, and cases cited.

STREET RAILROADS—Grants of Franchises and Privileges, and Nature and Construction Thereof: See Remington's Digest, St. R. R., §§ 1-1—3, and cases cited.

Passenger Service and Accommodations: See Remington's Digest, St. R. R., § 9-1.

Regulations as to Equipment of Cars and Motors: See Remington's Digest, St. R. R., § 9-2, and cases cited.

Regulations as to Speed and Movement of Cars: See Remington's Digest, St. R. R., § 9-3, and cases cited.

TELEGRAPH AND TELEPHONE COMPANIES—Regulation and Operation—Power of Commission: See Remington's Digest, Tel. & T., § 5, and cases cited.

§ 10340. [8626-4.] **Secretary.**

The commission shall have a secretary to be appointed by it and hold office at its pleasure. The secretary shall keep full and accurate minutes of all transactions and proceedings of the commission, and perform such duties as may be required by the commission. He shall receive an annual salary of two thousand dollars. [L. '11, p. 539, § 4.]

See *infra*, § 10783, duties relating to common carriers devolve upon director of public works.

See *infra*, § 10784, duties relating to other persons devolve upon director of public works.

See *infra*, § 10838, duties concerning regulating of utilities and inspection as to employees, devolve upon director of labor and industries.

See *infra*, § 10848, duties concerning inspection of grain, etc., devolve upon director of agriculture.

See *infra*, § 10893, public service commission abolished.

The "commission" refers to the Public Service Commission.

§ 10341. [8626-5.] **Duties of Attorney General.**

It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this act, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [L. '11, p. 540, § 5.]

See notes to § 10340.

§ 10342. [8626-6.] **Organization, Meetings, Official Seal, Employees, Expenses and Reports.**

The office of the commission shall be at the state capital, where the commission shall reside. The commission shall at all times be open and in session for the transaction of business. They shall be known collectively as "The Public Service Commission of Washington" and shall adopt and use an official seal.

The commission may appoint an expert rate clerk and statistician at a salary of not to exceed three thousand dollars (\$3,000) per annum, an engineer at a salary of not to exceed three thousand dollars (\$3,000) per annum, an inspector of safety appliances at a salary of not to exceed

three thousand dollars (\$3,000) per annum, an expert accountant at a salary not to exceed eighteen hundred dollars (\$1,800) per annum, a stenographer competent to report hearings at a salary not to exceed eighteen hundred dollars (\$1,800) per annum, and such engineers, inspectors, accountants, experts, clerks, and other assistants as it may deem necessary, at such rates of compensation as it may determine upon.

All employees of the commission shall take an oath before entering upon the discharge of their duties, to faithfully and impartially discharge the duties of their several offices.

The commissioners, secretary, and other employees of the commission shall be entitled to receive from the state their actual necessary expenses when traveling on the business of the commission.

The commission is authorized to procure all necessary books, maps, charts, stationery, instruments, office furniture and other appliances deemed by the commission necessary.

All proceedings of the commission, and all documents and records in its possession, shall be public records. The commission shall make and submit to the governor an annual report containing full and complete accounts of the transactions and proceedings of its office, together with the information gathered by the commission as herein required, and such other facts, suggestions and recommendations as may be by it deemed necessary, which report shall be published as the reports of the heads of departments. [L. '11, p. 540, § 6.]

See notes to § 10340.

§ 10343. [8626-7.] Quorum—Powers of a Commissioner.

A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission, and may hold hearings at any time or place within or without the state. Any investigation, inquiry or hearing which the commission has the power to undertake or to hold may be undertaken or held by or before any commissioner. All investigations, inquiries and hearings of a commissioner shall be and be deemed to be the investigations, inquiries and hearings of the commission, and all findings, orders or decisions, made by a commissioner, when approved and confirmed by the commission and filed in its office, shall be and be deemed to be the findings, orders or decisions of the commission. [L. '11, p. 541, § 7.]

See notes to § 10340.

§ 10344. [8626-8.] Definitions.

The term "commission," when used in this act, means the public service commission hereby created.

The term "commissioner," when used in this act, means one of the members of such commission.

The term "corporation," when used in this act, includes a corporation, company, association or joint stock association.

The word "person," when used in this act, includes an individual, a firm or copartnership.

The term "street railroad," when used in this act, includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above, or below any street, avenue, road, highway, bridge or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such street railroad, within this state.

The term "railroad," when used in this act, includes every railroad, other than a street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad.

The term "street railroad company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

The term "railroad company," when used in this act, includes every corporation, company, association, joint stock association, partnership or person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

The term "express company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, who shall engage in or transact the business of carrying any freight, merchandise or property for hire on the line of any common carrier operated in this state.

The term "common carrier," when used in this act, includes all railroads, railroad companies, street railroads, street railroad companies, steamboat companies, express companies, car companies, sleeping car companies, freight companies, freight line companies, and every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

The term "gas plant," when used in this act, includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas (natural or manufactured) for light, heat or power.

The term "gas company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court what-

soever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

The term "electric plant," when used in this act, includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

The term "electrical company," when used in this act, includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state.

The term "transportation of property," when used in this act, includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property transported, and the transmission of credit.

The term "transportation of persons," when used in this act, includes any service in connection with the receiving, carriage and delivery of the person transported and his baggage and all facilities used, or necessary to be used in connection with the safety, comfort and convenience of the person transported.

The term "service," is used in this act in its broadest and most inclusive sense.

The term "telephone company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire within this state.

The term "telephone line," when used in this act, includes conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telephone company to facilitate the business of affording telephonic communication.

The term "telegraph company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, or managing any telegraph line or part of telegraph line used in the conduct of the business of affording for hire communication by telegraph within this state.

The term "telegraph line," when used in this act, includes conduits, poles, wires, cables, cross-arms, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, prop-

erty and routes used, operated or owned by any telegraph company to facilitate the business of affording communication by telegraph.

The term "water system," when used in this act, includes all real estate, easements, fixtures, personal property, dams, dikes, headgates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

The term "water company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating or managing any water system for hire within this state.

The term "vessel," when used in this act, includes every species of water craft, by whatsoever power operated, for the public use in the conveyance of persons or property for hire over and upon the waters within this state (excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five gross tons propelled by gas, fluid, naphtha or electric motors).

The term "steamboat company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, leasing, operating or managing any vessel over and upon the waters of this state.

The term "dock" or "wharf" when used in this act, includes any and all structures at which any steamboat, vessel or other water craft lands for the purpose of receiving or discharging freight from or for the public, together with any building or warehouse used for storing such freight for the public for hire.

The term "warehouse," when used in this act, includes any building or structure in which freight is received for storage from the public for hire, intended for shipment or discharged by any water craft.

The term "wharfinger" or "warehouseman," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, operating or managing any dock, wharf, or structure where steamboats, vessels or other water craft land for the purpose of discharging freight for the public, and where such freight is received on such dock, wharf or structure for the public for hire within this state.

The term "public service company," when used in this act, includes every common carrier, gas company, electrical company, water company, telephone company, telegraph company, wharfinger and warehouseman as such terms are defined in this section. [L. '11, p. 541, § 8.]

Cited in 76 Wash. 639; 78 Wash. 205; 89 Wash. 603.

5478, supra: State ex rel. Allen v. Public Serv. Com., 111 Wash. 294, 190 Pac. 1012.

This act does not cover the whole subject matter of ferries and does not impliedly repeal the ferry law, §§ 5462—

This section makes express companies common carriers: State v. Northern Express Co., 76 Wash. 636, 136 Pac. 1160.

This section and sections 10366, 10369, dealing with the questions of the safety, efficiency, rates and equality of public service, did not abrogate or affect a prior city franchise granting the right to transmit and furnish electric current for the purposes of furnishing heat and power and lighting for street-cars on condition that the grantee should not furnish electricity for lighting purposes. *Tacoma R. & Power Co. v. Tacoma*, 79 Wash. 508, 140 Pac. 565.

"Private" Rights.—The public service commission is given no power to inquire into the private contracts of a public traction company whereby it sells its surplus electrical power to private individuals, since the "rates" falling within the scope of the act, must mean a charge to the public for a service open to all upon the same terms, and not a consideration of a private contract in which the public has no interest: *State ex rel. Public Service Commission v. Spokane & Inland Empire R. Co.*, 89 Wash. 599, 154 Pac. 1110.

§ 10345. [8626-9.] Charges—Duties of Common Carriers.

All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable and sufficient.

Every common carrier shall construct, furnish, maintain and provide safe, adequate and sufficient service facilities, trackage, sidings, railroad connections, industrial and commercial spurs and equipment to enable it to promptly, expeditiously, safely and properly receive, transport and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort and convenience of its patrons, employees and the public.

All rules and regulations issued by any common carrier affecting or pertaining to the transportation of persons or property shall be just and reasonable. [L. '11, p. 546, § 9.]

See notes to § 10361.

Cited in 76 Wash. 639; 80 Wash. 329; 101 Wash. 609, 610; 103 Wash. 76.

The state having no power to place a burden upon interstate commerce, an interstate express company doing business in this state is free to renounce its intrastate business, notwithstanding the constitutional provisions making express companies common carriers subject to state control, and sections 10344—10346, 10389, prohibiting discrimination in privileges and transportation charges (overruling on rehearing *Id.*, 76 Wash. 636, 136 Pac. 1160): *State v. Northern Express Co.*, 80 Wash. 309, 141 Pac. 757.

What fares are fair, just and reasonable: *State ex rel. Tacoma R. & P. Co. v.*

Public Serv. Com., 101 Wash. 601, 172 Pac. 980; *State ex rel. Seattle v. Public Serv. Com.*, 103 Wash. 72, 173 Pac. 737.

Reasonableness of rates charged by carrier as affected by right to receive fair return on investment. *Ann. Cas.* 1913B, 774.

Matters to be considered on issue of reasonableness of freight rates. *Ann. Cas.* 1916A, 8, 56, 61; *Ann. Cas.* 1918E, 1216; 15 L. R. A. (N. S.) 108; 25 L. R. A. (N. S.) 1001.

Jurisdiction over carriers transporting by motor-trucks or buses. 1 A. L. R. 1460; 9 A. L. R. 1011.

§ 10346. [8626-10.] Duty of Carriers and Persons to Expedite Traffic.

Every common carrier shall under reasonable rules and regulations promptly and expeditiously receive, transport and deliver all persons or property offered to or received by it for transportation. All persons receiving cars for loading shall promptly and expeditiously load the same, and all persons receiving property shall promptly and expeditiously receive and remove the same from the cars and freight rooms. [L. '11, p. 547, § 10.]

Cited in 76 Wash. 639; 80 Wash. 329; 94 Wash. 278, 279, 281.

§ 10347. [8626-11.] Distribution of Cars.

Every railroad company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and offer property for transportation sufficient and suitable cars for the transportation of such property in carload lots. In case at any particular time a railroad company has not sufficient cars to meet all the requirements for transportation of property in carload lots, all cars available for such purpose shall be distributed among the several applicants therefor, without unjust discrimination between shippers, localities or competitive or noncompetitive points. [L. '11, p. 547, § 11.]

Cited in 94 Wash. 278, 279, 281.

Duty of carrier to furnish adequate number of coal cars to meet demands of traffic. *Ann. Cas.* 1914C, 1261.

Agreement of carrier to furnish cars

to shipper as binding contract. 12 *Ann. Cas.* 885.

Duty of carrier to furnish tank-cars. 7 *A. L. R.* 143.

Car shortage as affecting liability of carrier for failure to furnish cars. 10 *A. L. R.* 342.

§ 10348. [8626-12.] Railroads shall Keep a Distributing Book.

Every railroad company shall keep, subject to the inspection of any bona fide shipper, a book or books known as "car distributing book," which shall be kept by such officer or officers, employees of such railroad, and in such manner and form as the commission shall direct, showing among other things all orders for cars received by such railroad company, the name of the person ordering the same, the time when and place where such cars are required, the time when and place where such cars were supplied, and such other matters and information as the commission may prescribe. [L. '11, p. 547, § 12.]

See notes to § 10395.

§ 10349. [8626-13.] Switch and Side-track Connections.

A railroad company upon the application of any shipper shall construct, maintain and operate upon reasonable terms a switch connection or connections with a lateral line of railway or private side-track owned, operated or controlled by such shipper, and shall upon the application of any shipper provide upon its own property a side-track and switch connection with its line of railway, whenever such a side-track and switch connection is reasonably practicable, and can be put in with safety and the business therefor is sufficient to justify the same. [L. '11, p. 548, § 13.]

Cited in 77 Wash. 536; 111 Wash. 379.

This section and section 10398, are not unconstitutional as depriving the company of property without due process of law; since the spur is to be built entirely on land of the company held for public use, there is a full hearing, and the spur is to be paid for by others, and is open to the use of all shippers on reasonable terms: *State ex rel. Chicago, Milwaukee & Puget Sound R. Co. v. Public Service Commission*, 77 Wash. 529, 137 Pac. 1057, *Ann. Cas.* 1915D, 202, *L. R. A.* 1918B, 786.

Under this section, an agreement by a

railroad company to construct temporary spur-tracks to a mill is binding as a voluntary contract of the mill company, which cannot recover sums paid in excess of the cost: *Skagit Mill Co. v. Great Northern R. Co.*, 111 Wash. 378, 190 Pac. 901.

Power of public service commission to compel railroad to build side-track. *Ann. Cas.* 1915D, 210; *Ann. Cas.* 1918E, 339.

Validity of statute requiring railroad to build side-track to private establishment at own expense. 18 *Ann. Cas.* 991.

§ 10350. [8626-14.] Tariff Schedules—Publication.

Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classification for the transportation of persons and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open to the public inspection, as aforesaid, the separately established rates, fares, charges and classifications, applied to the through transportation. The schedules printed as aforesaid, shall plainly state the places between which property and persons will be carried, and shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and any rules and regulations which may in any wise change, affect, or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedule shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of any agent, and in every station or office of such carrier where passenger tickets for transportation or tickets covering sleeping or parlor cars or other train accommodation are sold or bills of lading or receipts for property are issued. All or any of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person and that the agent will assist any such person to determine from such schedules any transportation rates or fares, or rules and regulations which are in force shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of railroad companies as nearly as may be to the form of schedules required by the interstate commerce commission under the act of congress entitled "An act to regulate commerce," approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto.

The commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

The commission may, in its discretion, suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes. [L. '11, p. 548, § 14.]

See notes to § 10340.

See notes to § 10422.

Cited in 80 Wash. 219; 103 Wash. 76.

§ 10351. [8626-15.] Changes in Schedule—Notice Required.

Unless the commission otherwise orders no change shall be made in any classification, rate, fare, charge, rule or regulation which shall have been filed and published by a common carrier in compliance with the preceding section, except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, classification, fare or charge will go into effect; and all proposed changes shall be shown by printing, filing and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may by order allow changes in rates without requiring the thirty days' notice and the publication herein provided for. When any change is made in any rate, fare, charge, classification, rule or regulation, the effect of which is to increase any rate, fare or charge then existing, attention shall be directed to such increase by some character on the copy filed with the commission immediately preceding or following the item in such schedule, such character to be designated by the commission. [L. '11, p. 550, § 15.]

See notes to § 10340.

Cited in 80 Wash. 219.

Right of public service corporation to change rate while another rate is undetermined. 16 A. L. R. 1219.

§ 10352. [8626-16.] Concurrence in Joint Tariffs—Contracts, Agreements or Arrangements Between Carriers.

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

Every common carrier shall file with the commission copies of every contract, agreement or arrangement with any other common carrier or common carriers relating in any way to the transportation of persons or property. [L. '11, p. 550, § 16.]

§ 10353. [8626-17.] Common Carriers to File Interstate Tariffs.

Every common carrier shall print and file or cause to be filed with the commission schedules showing the rates, fare, charges and classifications for the transportation of persons and property between all points within the state and all points without the state upon its route, and be-

tween each point within the state and all points without the state upon every route leased, operated or controlled by it, and between each point upon its route within the state and all points without the state upon the route of any common carrier, whenever a through route and joint rate shall have been established between any two such points. If no joint rate over a through route has been established, the carrier operating within this state shall print and file with the commission the separately established rates, fares, charges and classifications applied to the through transportation. The schedules printed aforesaid shall plainly state the places between which property and persons will be carried, and shall also contain the classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges or other charges which the commission may require to be stated, all privileges granted or allowed, and any rules or regulations which may in anywise change, affect or determine any part or the aggregate of such aforesaid rates, fares, and charges or the value of the service rendered to the passenger, shipper or consignee. [L. '11, p. 551, § 17.]

§ 10354. [8626-18.] Published Rates to be Charged—Free or Reduced Transportation.

No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, its officers, agents, surgeons, physicians and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk and fruit; to employees of sleeping-car companies, express companies, and to linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains; baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the National Guard of Washington when on

official duty, and students going to and returning from state institutions of learning: Provided, that this provision shall not be construed to prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of railroad companies, steamboat companies, express companies and sleeping-car companies with other railroad companies, steamboat companies, express companies, and sleeping-car companies, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: And provided, further, that this provision shall not be construed to prohibit the exchange of passes or franks for the officers, attorneys, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, attorneys, agents, employees, and their families of other telegraph, telephone or cable lines, or with railroad companies, express companies or sleeping-car companies: Provided, further, that the term "employee" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this section shall include the families of those persons named in this proviso, also the families of persons killed and the widows during widowhood and minor children during minority of persons who died while in the service of any such common carrier: And provided, further, that nothing herein contained shall prevent the issuance of mileage, commutation tickets or excursion passenger tickets: And provided, further, that nothing in this section shall be construed to prevent the issuance of free or reduced transportation by any street railroad company for mail carriers or policemen or members of fire departments, city officers, and employees when engaged in the performance of their duties as such city employees.

Common carriers subject to the provisions of this act may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service.

Nothing in this act shall be construed to prohibit the making of a special contract providing for the mutual exchange of service between any railroad company and any telegraph or telephone company, where the line of such telegraph or telephone company is situated upon or along the railroad right of way and used by both such companies. [L. '11, p. 551, § 18.]

See, also, § 10366, *infra*.

Cited in 103 Wash. 75.

The fact that a railway company's published tariff of rates is greater than the amount agreed upon between the railway and a logging company for the carriage of its logs is not conclusive evidence that

the latter is discriminatory, where an independent consideration passed between the parties in addition to the rates charged: *Sultan R. & Timber Co. v. Great Northern R. Co.*, 58 Wash. 604, 109 Pac. 320, 1020.

The constitutional provision requiring the legislature to establish reasonable maximum transportation rates does not prevent the delegation of such power to a railroad commission, and this act providing a railroad commission impliedly repeals former maximum rate laws of the state, upon the taking effect of conflicting rates established by the commission: State ex rel. Great Northern R. Co. v. Railroad Com., 52 Wash. 33, 100 Pac. 184.

This act not having expressly conferred upon the public service commission authority to fix the rates to be charged by booming and driving companies for booming and driving logs, the commission has no jurisdiction over such companies in the matter of fixing tolls: Wishkah Boom Co. v. Greenwood Timber Co., 88 Wash. 568, 153 Pac. 367.

Tickets.—The constitutional and statutory provisions against discrimination by carriers, with the proviso (§ 10354) that nothing therein shall prevent the issuance of commutation tickets, give the carrier the right to issue temporary commutation tickets at its discretion: State ex rel. Seattle v. Public Serv. Com., 103 Wash. 72, 173 Pac. 737.

Validity of statutes requiring reduced rates to certain classes of persons. 2 Ann. Cas. 420; 9 Ann. Cas. 1130; Ann. Cas. 1912C, 841.

Validity of statute requiring free transportation or reduced rates to militia or other state or public officers. Ann. Cas. 1913E, 498; Ann. Cas. 1916E, 959; Ann. Cas. 1917C, 92.

§ 10355. [8626-19.] Railroads shall have Scales.

It shall be the duty of all railroads operating in this state, to provide suitable facilities for the testing of all track scales used by such railroads. The commission is hereby authorized, after a hearing, upon its own motion and after notice to the railroads operating in this state, to order a suitable car or other device or facility to be provided by the railroad companies operating in this state, to be used in testing the track scales used by such railroads, the expenses of providing such car, device or facility to be equitably and reasonably apportioned among the different railroad companies by the commission. Such car, device or facility shall be used by the commission to test the accuracy of all track scales, and the different railroad companies shall transport and move such car, device or facility without charge therefor, to the different places designated by the commission under such reasonable rules and regulations as the commission may prescribe. Such car, device or facility may be used in adjoining states to test the scales of railroad companies and for that purpose may be taken beyond the limits of the state under such reasonable rules and regulations for the due care and return thereof as the commission may prescribe. The commission is hereby authorized to prescribe and collect a reasonable fee sufficient to cover the cost and expenses connected therewith for the inspection and testing of all scales. [L. '11, p. 554, § 19.]

§ 10356. [8626-20.] Unjust Discrimination.

No common carrier shall, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered in the transportation of persons or property except as authorized in this act, than it charges, demands, collects or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions. [L. '11, p. 555, § 20.]

See notes to next section.

Cited in 112 Wash. 523.

Discrimination between shippers by carriers. 1 *Ann. Cas.* 55.

Right of railroad to discriminate in respect of switching charges. 2 *A. L. R.* 585.

Discrimination by requiring prepayment of freight. 21 *L. R. A. (N. S.)* 982.

Franchise provisions for free or re-

duced rates as within constitutional or statutory provision prohibiting discrimination. 10 *A. L. R.* 504; 15 *A. L. R.* 1200.

Who may maintain action to recover back excessive freight charges. 13 *A. L. R.* 289.

Right of carrier to discriminate with respect to special or unusual service. 12 *L. R. A. (N. S.)* 506.

§ 10357. [8626-21.] Unreasonable Preference.

No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [L. '11, p. 555, § 21.]

See notes to next section.

Cited in 77 Wash. 644; 103 Wash. 46; 112 Wash. 523.

It is not unlawful discrimination in charges or facilities for a railroad company to refuse to extend a spur of its track away from its existing tracks and over land not belonging to the railroad to a warehouse or elevator, when it has never done a like service to other shippers in the same line of business, but has confined its service to according them facilities for shipment by granting to them leases upon its right of way for the construction of elevators abutting upon its tracks: *Northwestern Warehouse Co. v. Oregon R. & Nav. Co.*, 32 Wash. 218, 73 Pac. 388.

In an action by a shipper for unjust discrimination by a common carrier, seeking to recover switching charges paid, a complaint is insufficient where it fails to allege that the defendant had failed to comply with the provisions of the act to regulate commerce with reference to the filing of a schedule of rates and that the rate charge exceeded the rate shown on the schedule: *Lilly Co. v. Northern Pac. R. Co.*, 64 Wash. 589, 117 Pac. 401.

A community is entitled to something more than mere reasonable rates, since the rates must be relatively equal to all shippers where there is no structural or operative difference favoring a haul from one point over a haul from another to the same shipping points; and it is an unreasonable and unlawful discrimination for a railroad company to charge less rates on

class commodities from Seattle than from Tacoma to the "jobbing center" of Spokane and tributary points, the difference in rates being sufficiently great to drive the Tacoma manufacturers and jobbers from the markets: *Public Serv. Com. ex rel. Transportation Bureau of Tacoma Commercial Club v. Northern Pac. R. Co.*, 77 Wash. 635, 138 Pac. 270.

The railway commission law, prohibiting discrimination between shippers by common carriers, does not prevent a railway company from entering into a contract with a shipper to carry particular goods at a fixed rate for a given time, or to the amount of a given quantity: *Sultan R. & Timber Co. v. Great N. R. Co.*, 58 Wash. 604, 109 Pac. 320, 1020.

The prohibition of this and last previous section is only against discrimination which is unjust and unreasonable; and milling in transit privileges may be granted if not unjust; and allowance for a back haul may be fair on a long haul which the road could not be compelled to grant on a shorter haul: *State ex rel. Great Northern R. Co. v. Public Serv. Com.*, 112 Wash. 520, 192 Pac. 1075.

Upon an issue as to the reasonableness of allowing a back haul, a long haul may make it fair to grant the privilege which the road could not be compelled to grant on a shorter haul: *State ex rel. Great Northern R. Co. v. Public Service Com.*, 112 Wash. 520, 192 Pac. 1075.

Right of railroad company to grant exclusive facilities to express company. 13 *Ann. Cas.* 1079.

§ 10358. [8626-22.] Long and Short Haul.

No common carrier, subject to the provisions of this act, shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property, for a shorter than a longer distance over the same line in the same direction, the shorter be-

ing included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates, subject to the provisions of this act; but this shall not be construed as authorizing any such common carrier to charge and receive as great a compensation for a shorter as for a longer distance or haul. Upon application of a common carrier the commission may by order authorize it to charge less for a longer than for a shorter distance for the transportation of persons or property in special cases after investigation by the commission, but the order must specify and prescribe the extent to which the common carrier making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any common carrier be relieved from the operation and requirements of this section. [L. '11, p. 555, § 22.]

Cited in 97 Wash. 599.

Action to recover overcharges, see notes to § 10433.

§ 10359. [8626-23.] False Billing, etc., by Carrier or Shipper.

No common carrier, or any officer or agent thereof, or any person acting for or employed by it, shall assist, suffer or permit any person or corporation to obtain transportation for any person or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published in accordance with the provisions of this act, by means of false billing, false classification, false weight or weighing, or false report of weight, or by any other device or means. No person or corporation, or any officer, agent or employee of a corporation, who shall deliver property for transportation within the state to a common carrier, shall seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor, as aforesaid, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents or substance of a package, or false report or statement of weight, or by any device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees.

No person, corporation, or any officer, agent, or employee, of a corporation, shall knowingly or willfully, directly or indirectly, by false statement or representation as to the cost, value, nature or extent of injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious or fraudulent, or to upon any false, fictitious or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate or payment for damage, or otherwise, in connection with or growing out of the transportation of persons or property, or agreement to transport such persons or property, whether with or without the consent or connivance of such common carrier or any of its officers, agents or employees, whereby the compensation of such carrier for such transportation shall be in fact made less than the rates then established and in force therefor.

No person, corporation, or any officer, agent or employee of a corporation, who shall deliver property for transportation within the state

to a common carrier, shall seek to obtain or obtain such transportation by any false representation, false statement or false paper or token as to the contents or substance thereof, where the transportation of such property is prohibited by law. [L. '11, p. 556, § 23.]

§ 10360. [8626-24.] Discrimination Prohibited—Connecting Lines.

Every railroad company shall, under such regulations as may be prescribed by the commission, afford all reasonable, proper and equal facilities for the interchange of passengers, tonnage and cars loaded or empty, between the lines, owned, operated, controlled or leased by it and the lines of every other railroad company; and shall, under such regulations as the commission may prescribe, receive and transport, without delay or discrimination, the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad: Provided, that perishable freight of all kinds and livestock shall have precedence of shipment. Every railroad company as such is required to receive from every other railroad company at a connecting point the tonnage carried by such other railroad company in the cars in which the same may be loaded, and haul the same through to the point of destination if the destination be upon a line owned, operated or controlled by such railroad company, or, if the destination be upon the line of some other railroad company, to haul such tonnage in such cars through to the connecting point upon the line operated, owned, controlled or leased by it by way of route over which such car is billed, and there deliver the same to the next connecting carrier, under such regulations as the commission may prescribe. [L. '11, p. 557, § 24.]

See notes to § 10389.

§ 10361. [8626-25.*] Fares and Transfers on Street Railroads.

No street railroad company shall charge, demand or collect more than five cents for one continuous ride within the corporate limits of any city or town: Provided, that such rate may be exceeded or lowered as to any municipally owned street railroad when the corporate authorities of the municipality owning such railroad shall, by an ordinance duly passed, authorize the collection of a higher or lower rate of fare, to be specified in such ordinance, and as to any other street railroad company, such rate may be exceeded or lowered with the permission or upon the order of the Public Service Commission after the filing of a tariff or a complaint by such street railroad company and a hearing thereon as provided in this act. Every street railroad company shall, upon such terms as shall be just and reasonable, furnish to its passengers transfers entitling such passenger to one continuous trip over and upon portions of its lines within the said city or town not reached by the originating car. [L. '19, p. 61, § 1; L. '11, p. 558, § 25.]

See notes to § 10389.

Cited in 101 Wash. 609.

This section, prior to amendment, and section 10444, making it a gross misdemeanor for any officer or agent to violate the law or fail to comply with any order of the railway commission, punishable

under section 2267, by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both, is unconstitutional as being a denial of the equal protection of the laws in that the company may only have a hearing upon a claim of the unconstitutionality of the statute at the risk of such heavy and suc-

cessive penalties as to amount to intimidation and foreclose its right to litigate the question: *State v. Crawford*, 74 Wash. 248, 133 Pac. 590, 46 L. R. A. (N. S.) 1039.

Under this section, prior to amendment, providing that no street railroad company shall charge or collect more than five cents for one continuous ride within the corporate limits, the public service commission had no power to increase the fare which a street railway company may charge within city limits to more than five cents, although that sum is found insufficient to pay a reasonable return on the property devoted to the public service and provide an adequate and sufficient service (see §§ 10345, 10389, *infra*), since

to harmonize the various provisions of the act, it must be construed as intending to give power to regulate rates so long only as it does not exceed the limit of five cents: *State ex rel. Tacoma R. & Power Co. v. Public Serv. Com.*, 101 Wash. 601, 172 Pac. 890.

This act does not abrogate a prior franchise ordinance by which a street-car company was obligated to carry city policemen and firemen in uniform free while in the discharge of their duties: *State ex rel. Seattle v. Seattle & Rainier Val. R. Co.*, 113 Wash. 684, 194 Pac. 820.

Power of public service commission with respect to regulation of street railways. 5 A. L. R. 36.

§ 10362. [8626-26.] Duties of Gas, Electrical and Water Companies.

All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered, in connection therewith, shall be just, fair, reasonable and sufficient.

Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public. [L. '11, p. 558, § 26.]

Cited in 76 Wash. 497; 107 Wash. 22.

This section authorizes an adjustment between different classes of customers and an increase over those asked for, if necessary to make them just and fair to each

class in order to enable the company to continue services: *State ex rel. Seattle v. Public Serv. Com.*, 107 Wash. 17, 180 Pac. 913.

§ 10363. [8626-27.] Gas, Electrical and Water Companies shall File Schedules.

Every gas company, electrical company and water company shall file with the commission and shall print and keep open to public inspection schedules in such form as the commission may prescribe, showing all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company or water company. [L. '11, p. 558, § 27.]

Cited in 76 Wash. 497.

Power of state to change private contract rates. 9 A. L. R. 1430.

State or municipal regulation of gas rates. 11 Ann. Cas. 748; 15 Ann. Cas. 1042; Ann. Cas. 1917B, 1026.

Regulation of rates of electric companies. Ann. Cas. 1915D, 473.

Applicability of public utility acts to municipal corporations owning or operating a public utility. 10 A. L. R. 1432.

§ 10364. [8626-28.] Change in Schedule—Notice Required.

Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company or water company in compliance with the requirements of the preceding section, except after thirty days' notice to the commission and publication for thirty days, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it shall take effect. All such changes shall be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, such character to be in form as designated by the commission. [L. '11, p. 559, § 28.]

Cited in 76 Wash. 497.

Under this section the new rates automatically go into effect upon the expiration of the thirty days, unless suspended or adjudged unreasonable by the public service commission in proceedings to de-

termine the reasonableness of the rates: State ex rel. Seattle v. Public Serv. Com., 76 Wash. 492, 136 Pac. 850.

Power of public service commission to increase franchise rates. 3 A. L. R. 730; 9 A. L. R. 1165.

§ 10365. [8626-29.] Published Rates to be Charged—Exceptions.

No gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: Provided, that the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and the term "families," as used in this paragraph, shall include the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the widows during widowhood, and minor children

during minority of persons who died while in the service of any of the companies named in this paragraph: And provided, further, that water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested.

No gas company, electrical company or water company shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances. [L. '11, p. 560, § 29.]

See, also, § 10354, *supra*.

This section does not require an independent valuation of a street railway system prior to fixing reasonable rates for

passenger fares: *State ex rel. Seattle v. Public Serv. Com.*, 103 Wash. 72, 173 Pac. 737.

§ 10366. [8626-30.] Unreasonable Preference.

No gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [L. '11, p. 560, § 30.]

See notes to § 10344.

See notes to § 10422.

Cited in 80 Wash. 655.

§ 10367. [8626-31.] Unjust Discrimination.

No gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this act, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions. [L. '11, p. 561, § 31.]

Cited in 80 Wash. 655.

Constitution, Article XII, section 15, forbidding discrimination in charges or facilities for transportation is not self-executing: *Northwestern Warehouse Co. v. Oregon R. & Nav. Co.*, 32 Wash. 218, 73 Pac. 388.

The public service commission is invested with exclusive jurisdiction, to pass upon and determine the question of a discrimination of rates charged by a water company: *State ex rel. Goss v. Metaline Falls Light & Water Co.*, 80 Wash. 652, 141 Pac. 1142.

§ 10368. [8626-32.] Sliding Scale of Charges.

Nothing in this act shall be taken to prohibit a gas company, electrical company or water company from establishing a sliding scale of charges, whereby a greater charge is made per unit for a lesser than a greater quantity for gas, electricity or water, or any service rendered or to be rendered. [L. '11, p. 561, § 32.]

§ 10369. [8626-33.] Distribution Without Discrimination.

Every gas company, electrical company or water company, engaged in the sale and distribution of gas, electricity or water, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity and water as demanded. [L. '11, p. 561, § 33.]

See notes to § 10344.

Right of electric company to discriminate against a concern which desires service for resale. 12 A. L. R. 327.

Duty of electric company to furnish service without discrimination. Ann. Cas. 1914B, 26.

§ 10370. [8626-34.] Existing Contracts—Effect.

Nothing in this act shall be construed to prevent any gas company, electrical company or water company from continuing to furnish its product or the use of its lines, equipment or service under any contract or contracts in force at the date this act takes effect, or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as herein provided, at the rates fixed in such contract or contracts: Provided, that the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the company party thereto, and thereupon such contract or contracts shall be terminated by such company as and when directed by such order: Provided further, that the commission shall have no power to order the termination of any contract relating to the furnishing of water for irrigation or irrigation and domestic use, where such contract is based upon a consideration passing at the time of the execution of such contract. [L. '11, p. 561, § 34.]

See notes to § 10340.

Cited in 83 Wash. 136; 92 Wash. 339, 340, 342.

Under this section the commission may, after ordering the termination of contracts for free water, upon the intervention of the parties interested, vacate its order, where it appears that the water company's deed for its water supply and the contracts for free water to the grantors in such deed were parts of one and the same transaction, and that one was the consideration for the other: State ex rel. Raymond Light & Water Co. v. Public Serv. Com., 83 Wash. 130, 145 Pac. 215.

Agreements made by a water company, in acquiring all the water supply of mill companies without reservation, to furnish the mill companies with water for a stated period, free or at reduced rates, are

not either void or voidable under the terms of this act; and this section does not authorize the commission to terminate the contracts, but only authorizes a termination of such contracts, if legal, by the consent of the parties or such legal proceedings by the company as may be proper: State ex rel. Raymond Light & Water Co. v. Public Serv. Com., 83 Wash. 130, 145 Pac. 215.

This section does not operate to terminate contracts for the supplying of water in force at the date of its taking effect, or upon the taking effect of schedules fixed by the public service commission, but it does confer power on the commission to order the parties to terminate such contracts: Raymond Lumber Co. v. Raymond Light & Water Co., 92 Wash. 330, 159 Pac. 133, L. R. A. 1917C, 574.

§ 10371. [8626-35.] Charges and Service of Telephone and Telegraph Companies.

All rates, tolls, contracts and charges, rules and regulations of telephone and telegraph companies, for messages, conversations, services

rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any telephone or telegraph company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.

Every telephone and telegraph company operating in this state shall provide and maintain suitable and adequate buildings and facilities therein, or connected therewith, for the accommodation, comfort and convenience of its patrons and employees.

Every telephone company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded. [L. '11, p. 562, § 35.]

Right and duty of telephone companies to make physical connection of exchanges or lines. 11 A. L. R. 1204.

Regulations or provisions upon requiring physical connection of telephone lines. 16 A. L. R. 352.

§ 10372. [8626-36.] Tariff Schedule—Publication.

Every telephone and telegraph company shall file with the commission and shall print and keep open to public inspection at such points as the commission may designate, schedules showing the rates, tolls, rentals, contracts and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and services to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points. If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, contracts and charges applicable for such through service. The schedules printed as aforesaid shall plainly state the places between which telephone or telegraph service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations or forms of contract which may in any wise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered. A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telephone company and telegraph company readily accessible to and for convenient inspection by the public at such places as may be designated by the commission, which schedule shall state the rates charged from such station to every other station on such company's line, or on any

line controlled and used by it within the state. All or any of such schedules kept as aforesaid shall be immediately produced by such telephone company or telegraph company upon the demand of any person. A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telephone company and telegraph company in a conspicuous place in every station or office of such company. [L. '11, p. 563, § 36.]

See notes to § 10340.

§ 10373. [8626-37.] Changes in Schedules.

Unless the commission otherwise orders, no change shall be made in any rate, toll, rental, contract or charge, which shall have been filed and published by any telephone or telegraph company in compliance with the requirements of the preceding section, except after thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in the preceding section, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, contract or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission for good cause shown may allow changes in rates, charges, tolls, rentals or contracts without requiring the thirty days' notice and publication herein provided for, by an order specifying the change so to be made and the time when it shall take effect, and the manner in which the same shall be filed and published. When any change is made in any rate, toll, contract, rental or charge, the effect of which is to increase any rate, toll, rental or charge then existing, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, which character shall be in such form as the commission may designate. [L. '11, p. 564, § 37.]

Power of state to increase franchise
rates or change private contract

rates. 3 A. L. R. 730; 9 A. L. R.
1165; 9 A. L. R. 1435.

§ 10374. [8626-38.] Concurrence in Joint Tariffs, Contracts, Agreements or Arrangements Between Telephone and Telegraph Companies.

The names of the several companies which are parties to any joint rates, tolls, contracts or charges of telephone companies and telegraph companies for messages, conversations and service to be rendered shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the companies filing the same to also file copies of the tariff in which they are named as parties. [L. '11, p. 565, § 38.]

§ 10375. [8626-39.] Telephone and Telegraph Companies shall Furnish Copies of Contracts.

Every telephone and telegraph company shall file with the commission, as and when required by it, a copy of any contract, agreement or arrangement in writing with any other telephone company or telegraph company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telephone line or telegraph line or service by, or rates and charges over and upon, any such telephone line or telegraph line. [L. '11, p. 565, § 39.]

§ 10376. [8626-40.] Schedule Rate to be Charged—Exceptions.

No telephone or telegraph company shall charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telephone company or telegraph company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

No telephone company or telegraph company subject to the provisions of this act shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by either telephone or telegraph between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys at law, and their families and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's Christian Associations, Young Women's Christian Associations; to indigent and destitute persons, and to officers and employees of other telephone companies, telegraph companies, railroad companies and street railroad companies. [L. '11, p. 565, § 40.]

During the governmental control in the exercise of war powers, the public service commission had no jurisdiction to regulate the tolls: State ex rel. Seattle v. Public Serv. Com., 110 Wash. 130, 188 Pac. 7.

§ 10377. [8626-41.] Unjust Discrimination.

No telegraph or telephone company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telegraph or telephone or in connection therewith, except as authorized in this act than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telegraph or telephone under the same or substantially the same circumstances and conditions. [L. '11, p. 566, § 41.]

Discrimination by telegraph or telephone company in respect to extension of credit. 12 A. L. R. 964.

§ 10378. [8626-42.] Unreasonable Preference.

No telegraph company or telephone company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [L. '11, p. 566, § 42.]

§ 10379. [8626-43.] Existing Contracts—Effect.

Nothing in this act shall be construed to prevent any telegraph company or telephone company from continuing to furnish the use of its line, equipment or service under any contract or contracts in force at the date this act takes effect or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as herein provided, at the rates fixed in such contract or contracts: Provided, however, that the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the telephone company or telegraph company party thereto, and thereupon such contract or contracts shall be terminated by such telephone company or telegraph company as and when directed by such order. [L. '11, p. 567, § 43.]

See notes to § 10433.

Cited in 102 Wash. 203—205; 110 Wash. 398, 400, 402.

Where there is no compliance with this section, a franchise limiting one-party residence rates to two dollars, is not

affected by the company's filing a schedule raising the rate to three dollars, until affirmative action is taken by the commission: State ex rel. Ellertsen v. Home Tel. & Tel. Co., 102 Wash. 196, 172 Pac. 899.

§ 10380. [8626-44.] Unjust Discrimination.

No telephone or telegraph company subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transmission of any long distance conversation or message of like kind for a shorter than for a longer distance over the same line, in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates subject to the provision of this act, but this shall not be construed as authorizing any such telephone company or telegraph company to charge and receive as great a compensation for a shorter as for a longer distance. Upon application of any telephone company or telegraph company the commission may, by order, authorize it to charge less for longer than for a shorter distance service for the transmission of conversation or messages in special cases after investigation, but the order must specify and prescribe the extent to which the telephone company or telegraph company making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any telephone company or telegraph company be relieved from the requirements of this section. [L. '11, p. 567, § 44.]

§ 10381. [8626-45.] Transmission of Messages of Other Lines.

Every telephone company or telegraph company operating in this state shall receive, transmit and deliver, without discrimination or delay, the

messages of any other telephone or telegraph company. [L. '11, p. 568, § 45.]

§ 10382. [8626-46.] Charges, Duties of Wharfingers.

All charges made for any service rendered or to be rendered in the receipt, storage or handling of property or in connection therewith by any wharfinger or warehouseman shall be just, fair, reasonable and sufficient. Every wharfinger or warehouseman shall furnish and supply such wharves, docks, buildings, service, instrumentalities and facilities as shall be safe, adequate and efficient and in all respects just and reasonable. All rules and regulations issued by any wharfinger or warehouseman affecting or pertaining to the dockage, storage, handling and care of property shall be just and reasonable. Every wharfinger and warehouseman shall construct and maintain such facilities in connection with his warehouse, wharf, dock and structure as will be efficient and safe to its employees and the public. [L. '11, p. 568, § 46.]

§ 10383. [8626-47.] Tariff Schedule—Publication.

Every warehouseman or wharfinger shall file with the commission and shall print and keep open to the public inspection schedules in such form as the commission may prescribe, showing all rates and charges made, used or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such warehouseman or wharfinger. [L. '11, p. 568, § 47.]

§ 10384. [8626-48.] Change in Schedule, Notice Required.

Unless the commission otherwise orders, no change will be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by the wharfinger or warehouseman in compliance with the requirements of the preceding section, except by thirty days' notice to the commission and publication for thirty days, which schedule shall plainly state the changes to be made in the schedule then in force and the time when the change will go into effect, and all proposed changes shall be shown by printing, filing, and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to the public inspection. The commission for good cause shown may allow changes without requiring the thirty days' notice by duly filing in such manner as it may direct an order specifying the changes so to be made and the time when it shall take effect; all such changes shall be immediately indicated upon its schedule by the warehouseman or wharfinger affected. [L. '11, p. 568, § 48.]

§ 10385. [8626-49.] Published Rates to be Charged—Exceptions.

No wharfinger or warehouseman shall charge, demand, collect, or receive a greater, less or different compensation for any service rendered or to be rendered, than the rates charged applicable to such service as specified in its schedule filed and in effect at the time. Nor shall any such wharfinger or warehouseman directly or indirectly refund or remit in any man-

ner or by any device, any portion of the rate or charge so specified, or furnish dockage, wharfage or storage or free or reduced rates except to its employees and their families and its officers, attorneys and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: Provided, that the term "employees," as used in this section shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of such wharfinger or warehouseman, and the term "families," as used in this section, shall include the families of those persons named in this proviso, also the families of persons killed or dying in the service, also the families of persons killed, and the widows, during widowhood, and the minor children during minority of persons who died while in the service of any such wharfinger or warehouseman.

No wharfinger or warehouseman shall extend to any person or corporation any form of contract or agreement, or any rule or regulation or any privilege or facility except as are regularly and uniformly extended to all persons and corporations under like circumstances. [L. '11, p. 569, § 49.]

§ 10386. [8626-50.] Unreasonable Preference.

No wharfinger or warehouseman shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service or traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever. [L. '11, p. 570, § 50.]

§ 10387. [8626-51.] Unjust Discrimination.

No wharfinger or warehouseman shall, directly or indirectly or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for the wharfage, dockage or storage of property, or for any service rendered or to be rendered or in connection therewith, except as authorized by this act, than it charges, demands, collects or receives from any person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances and conditions. [L. '11, p. 570, § 51.]

§ 10388. [8626-52.] Service Without Discrimination.

Every wharfinger or warehouseman shall upon demand furnish to all persons or corporations who may apply therefor and be reasonably entitled thereto suitable facilities for storing and transferring property from such warehouse, wharf, dock or structure, to any vessel and from any vessel to any such warehouse, wharf, dock or structure. [L. '11, p. 570, § 52.]

§ 10389. [8626-53.] Charges and Services to be Fixed by Commission.

Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, as herein provided, that the rates, fares

or charges demanded, exacted, charged or collected by any common carrier for the transportation of persons or property within the state or in connection therewith, or that the regulations or practices of such common carrier affecting such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any wise in violation of the provisions of law, or that such rates, fares or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable or sufficient rates, fares or charges, regulations or practices to be thereafter observed and enforced and shall fix the same by order as hereinafter provided.

Whenever the commission shall find, after such hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of persons and property by such common carrier, and fix the same by its order or rule as hereinafter provided. [L. '11, p. 571, § 53.]

See notes to § 10340.

Cited in 76 Wash. 639; 78 Wash. 205; 80 Wash. 329; 95 Wash. 383; 101 Wash. 606, 609—611, 613; 103 Wash. 47, 77, 79.

The reduction of rates as to ten per cent of the passengers carried by an interurban road to a figure that will give a profit on the actual cost of that part of the haul, although not an adequate return upon the investment, is justified where the company thereby earns a revenue that it could not otherwise obtain and its profits on its other business is not affected and when the same is all that such patrons can afford to pay for the service; and such a rate is not unjust discrimination against persons and places: Puget Sound Electric R. v. Railroad Com., 65 Wash. 75, 117 Pac. 739, Ann. Cas. 1913B, 763.

It is not unjust discrimination to reduce the rates of an interurban railroad below the amounts charged by steam railroads touching certain points, where the railroads are not seeking to handle that class of traffic and have not the facilities or the time schedules to make them in reality competing lines: Puget Sound Electric R. v. Railroad Com., 65 Wash. 75, 117 Pac. 739, Ann. Cas. 1913B, 763.

This section authorizes the commission to require a common carrier to accommodate its business and facilities to the requirements of the law, to the end that it furnish adequate service at a reasonable price: State v. Northern Express Co., 76 Wash. 636, 136 Pac. 1160. But see *Id.*, 80 Wash. 309, 141 Pac. 757.

This act revokes the power of a city, after the taking effect of the law, to legislate upon the subject of overcrowding the street-cars, or operating in accordance with specified schedules, and vests the same in the public service commission: Seattle Electric Co. v. Seattle, 78 Wash. 203, 138 Pac. 892.

The granting of milling privileges in transit must be without wrongful prejudice to the rights of other shippers, and its control is within the jurisdiction of the public service commission, under this section: State ex rel. Northern Pac. R. Co. v. Public Serv. Com., 95 Wash. 376, 163 Pac. 1143, 166 Pac. 793.

This section conferring power upon the public service commission to deal with questions of safety, efficiency, rates and service of street railway companies, does not confer power to abrogate franchise provisions theretofore imposed by cities under the authority of section 8966, supra, subdivision 7: Seattle v. Puget S. Tr. L. & P. Co., 103 Wash. 41, 174 Pac. 464.

Under this section the commission has power to abrogate a pre-existing franchise provision requiring the sale of commutation tickets at a certain price; since the city could not bind itself as against the state's exercise of the police power in fixing reasonable rates: State ex rel. Seattle v. Public Serv. Com., 103 Wash. 72, 173 Pac. 737.

§ 10390. [8626-54.] Charges and Service of Gas Companies, Electrical and Water Companies to be Fixed by Commission.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint as herein provided, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

Whenever the commission shall find, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, or the purity, volume and pressure of water, supplied by any gas company, electrical company or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company or water company, as will in its judgment be efficient, adequate, just and reasonable.

Whenever the commission shall find, after hearing, that any rules, regulations, measurements, or the standard thereof, practices, acts or services of any such gas company, electrical company or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order, or rule, as hereinafter provided. [L. '11, p. 571, § 54.]

See notes to §§ 10340, 10362, *supra*, and §§ 10422, 10424, *infra*.

Cited in 76 Wash. 498, 499.

It is a reasonable regulation of a gas company to require that its customers owning apartment houses and desiring to install more than one meter shall provide a separate meter-room on each floor or in the basement where all meters may be installed, where it appears that such an arrangement would be more sanitary, and there would be less danger of explosion in case of fire and less trouble and expense in making repairs and collections: *State ex rel. Hallett v. Seattle Lighting Co.*, 60 Wash. 81, 110 Pac. 799, 30 L. R. A. (N. S.) 492.

The waiver by a gas company of its regulations as to buildings that had already been constructed does not estop the company from enforcing the regula-

tions as to new buildings constructed with notice of the rules: *State ex rel. Hallett v. Seattle Lighting Co.*, 60 Wash. 81, 110 Pac. 799, 30 L. R. A. (N. S.) 492.

Where a proposed change was contested on the complaint of third persons, it is not error for the commission to rule that the company does not assume the burden of proving the reasonableness of the rates; and a finding by the commission, negative in form, to the effect, that neither party had produced convincing evidence tending to show either the reasonableness or unreasonableness of the rates and charges proposed, and dismissing the proceeding for failure of the complainant to prove its unreasonableness, results in such new rate becoming automatically effective: *State ex rel. Seattle v. Public Serv. Com.*, 76 Wash. 492, 136 Pac. 850.

Under this section and §§ 10423, 10424, the discretion of the commission to enter upon an inquiry on its own motion, or to pursue an inquiry beyond the evidence brought before it by the complaining or

defending parties, when no convincing evidence is offered by either party, cannot be controlled by the courts: *State ex rel. Seattle v. Public Serv. Com.*, 76 Wash. 492, 136 Pac. 850.

§ 10391. [8626-55.] Commission to Fix Charges and Service of Telephone and Telegraph Companies.

Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any telegraph company or telephone company for the transmission of messages by telegraph or telephone, or for the rental or use of any telegraph line, telephone line or any telegraph instrument, wire, appliance, apparatus or device or any telephone receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance or device, or any telephone extension or extension system, or that the rules, regulations or practices of any telegraph company or telephone company affecting such rates, charges, tolls, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of law, or that such rates, charges, tolls or rentals are insufficient to yield reasonable compensation for the service rendered, the commission shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and in force, and fix the same by order as hereinafter provided.

Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telegraph company or telephone company are unjust or unreasonable, or that the equipment, facilities or service of any telegraph company or telephone company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as hereinafter provided. [L. '11, p. 573, § 55.]

See notes to § 10340.

See notes to §§ 10407, 10409.

Charges.—The rule of a telephone company that its rentals shall be payable monthly in advance, and fifty cents added as a collection fee if not paid on the tenth of the month, is a reasonable rule which such a company may enforce as a public service corporation; and the fifty-cent fee is not in addition to the maximum charge allowed by its franchise, but is a reasonable regulation and charge for default and delinquency: *State ex rel. MacMahon v. Independent Tel. Co.*, 59 Wash. 156, 109 Pac. 366, 31 L. R. A. (N. S.) 329.

Under this section the commission has power to require a telephone company to raise its rates above the maximum permitted by its city franchise, where such increased rate has become necessary to provide sufficient revenue to give an adequate service: *State ex rel. Webster v. Superior Court*, 67 Wash. 37, 120 Pac. 861, Ann. Cas. 1913D, 78, L. R. A. 1915C, 287.

A telephone franchise ordinance limiting the amount of the rates or charges is a contract obligation, binding until abrogated by the state in the exercise of its police power; and the company having accepted and agreed upon the terms cannot complain thereof until relieved by the public service commission: *State ex rel. Ellertsen v. Home Tel. & Tel. Co.*, 102 Wash. 196, 172 Pac. 899.

Duty to Furnish Service and Facilities.

A telephone company will not be compelled by mandamus to publish on or about April 15th a directory of subscribers to its telephone system, where it had answered that it was then engaged in compiling and publishing such a directory in the regular course of its business, which it would have ready for distribution early in the month of April: *State ex rel. Bauer v. Sunset Tel. & Tel. Co.*, 30 Wash. 676, 71 Pac. 198.

Where one telephone company has by contract opened its lines to physical connection and services for another telephone

company upon certain terms, its act is equivalent to a declaration of a purpose to waive its primary right of independence, and it can be required, as a state regulation within the police power, to ac-

cord the same facilities, conveniences and uses to other telephone companies upon equal terms: *State ex rel. Public Serv. Com. v. Skagit River Tel. & Tel. Co.*, 85 Wash. 29, 147 Pac. 885.

§ 10392. [8626-56.] Charges and Service of Wharfingers and Warehouseman to be Fixed by Commission.

Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, as herein provided, that the rates or charges demanded, exacted, charged or collected by any wharfinger or warehouseman for the receipt, storage or handling of freight, or in connection therewith, or that the rules, regulations or practices affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of law, or that such rates and charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable or sufficient rates, charges, rules, regulations, or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

Whenever the commission shall find, after such hearing, that the rules, regulations or practices of any wharfinger or warehouseman are unjust or unreasonable, or that the equipment, facilities or service of any wharfinger or warehouseman are inadequate, inefficient, improper, insufficient, or unsafe, the commission shall determine the just, reasonable, proper, adequate, efficient and safe rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order of the commission as hereinafter provided. [L. '11, p. 573, § 56.]

See notes to § 10340.

Legislative regulation of warehouse rates. 33 L. B. A. 178.

§ 10393. [8626-57.] Joint Rates and Through Routes on Railroads.

Whenever the commission shall be of opinion, after hearing had upon its own motion or upon complaint, that the rates and charges in force over two or more railroads, between any two points in the state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate exists between such points, and that the public necessities and convenience demand the establishment of a through route and a joint rate between such points, the commission may order such railroads to establish such through route, and may establish and fix a joint rate which will be fair, just, reasonable and sufficient, to be followed, charged, enforced, demanded and collected in the future, and the commission may order that carload freight moving between such points shall be carried by the different companies, parties to such through route and joint rate, without being transferred from the originating cars. In case no agreement exists between such railroads for the interchange of cars, then the commission, before making such order, shall be empowered to, and it shall be its duty, to make rules for the expeditious and safe return and proper

compensation for the cars so loaded by the company or companies receiving the same. [L. '11, p. 574, § 57.]

See notes to § 10340.

Cited in 76 Wash. 631.

The public service commission has power to apportion joint rates between common

carriers, under this section: State ex rel. Great Northern R. Co. v. Public Serv. Com., 76 Wash. 625, 137 Pac. 132.

§ 10394. [8626-58.] Interstate Fares—Rates, Charges, etc.

The commission shall have power, and it is hereby made its duty, to investigate all interstate rates, fares, charges, classifications or rules or practices in relation thereto, for or in relation to the transportation of persons or property or the transmission of messages or conversations, where any act in relation thereto shall take place within this state, and when the same are, in the opinion of the commission, excessive or discriminatory, or are levied or laid in violation of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission shall apply, by petition, to the interstate commerce commission for relief, and may present to the interstate commerce commission all facts coming to its knowledge as to violations of the rulings, orders or regulations of that commission, or as to violations of the said act to regulate commerce or acts amendatory thereof or supplementary thereto. [L. '11, p. 575, § 58.]

See notes to § 10340.

§ 10395. [8626-59.] Powers of Commission to Provide Rules for Expediting Traffic.

The commission shall have, and it is hereby given, power to provide by proper rules and regulations the time within which all railroads shall furnish, after demand therefor, all cars, equipment and facilities for the handling of freight in carload and less than carload lots, and receiving, gathering and transporting, after demand, of all express packages and the delivery thereof at destination, the extent of free gathering and distributing limits for express packages in cities and towns, the distance that freight shall be transported each day after receipt, the time within which consignors or persons ordering cars shall load the same, and the time within which consignees and persons to whom freight may be consigned shall unload and discharge the same and receive freight from the freight-rooms, and to provide the penalties to be paid to consignors and consignees for delays on the part of railroads to conform to such rules, and prescribe the penalty to be paid by consignors and consignees to railroads for failure to observe such rules. [L. '11, p. 575, § 59.]

See notes to § 10340.

Cited in 94 Wash. 278, 279—281.

This section and section 10427, empowering the public service commission to fix the time for furnishing cars and provide the penalty to be paid shippers for delays, is not unconstitutional as an unlawful delegation of legislative powers, in contravention of Constitution, Article II,

section 1: State ex rel. Chicago, Milwaukee & St. Paul R. Co. v. Public Serv. Com., 94 Wash. 274, 162 Pac. 523.

The public service commission cannot, under authority to adopt rules governing reciprocal demurrage charges for failure to furnish cars, adopt a rule providing that, when any dispute or controversy

arises between shipper and carrier with reference to the application of the rules for demurrage, a complaint shall be filed with the commission and a trial had subject to review in the same manner as other decisions and orders of the commission: *State ex rel. Chicago, Milwaukee & St. Paul R. Co. v. Public Serv. Com.*, 94 Wash. 274, 162 Pac. 523.

The statute providing no method for the collection of demurrage charges to be paid to shippers for delay in furnishing cars, the remedy of the shipper is by action at law; there being no right without a remedy: *State ex rel. Chicago, Milwaukee & St. Paul R. Co. v. Public Serv. Com.*, 94 Wash. 274, 162 Pac. 523.

Although the terms of this section and section 10427, empowering the public service commission to fix the time for furnishing cars and provide the penalty to be paid shippers for delays is broad enough to apply to cars ordered for interstate commerce, the dominant purposes of the act, to be gathered from all of its provisions, to regulate only intrastate commerce must be read into all its provisions: *State ex rel. Chicago, Milwaukee & St. Paul R. Co. v. Public Serv. Com.*, 94 Wash. 274, 162 Pac. 523.

It will not be assumed that the legislature intended to adopt the construction of other state courts that such rules applied to both kinds of commerce when to do so would make the law unconstitutional: *State ex rel. Chicago, Milwaukee & St. Paul R. Co. v. Public Serv. Com.*, 94 Wash. 274, 162 Pac. 523.

Orders of the railroad commission respecting railroad service and facilities will not be set aside on appeal as unreasonable, unless they clearly so appear, the presumptions being that they are reasonable: *State ex rel. Great Northern R. Co. v. Railroad Com.*, 60 Wash. 218, 110 Pac. 1075.

An order of the railroad commission re-

quiring an additional train from Anacortes to Burlington and return, to connect with the noon trains on the main line, held not unreasonable: *State ex rel. Great Northern R. Co. v. Railroad Com.*, 60 Wash. 218, 110 Pac. 1075.

An order of the railroad commission requiring a daily mixed freight and passenger service over a branch line fourteen miles long is unreasonable, where the income from passenger travel resulting therefrom was only nine cents per mile, and cost over thirty cents per mile, the present bi-weekly freight service was adequate, and a financial loss to the company, which loss would be increased by the change without any great necessity for it: *State ex rel. Northern Pac. R. Co. v. Railroad Com.*, 62 Wash. 193, 113 Pac. 252.

Although a railroad company operates only interstate trains, it may be required by the public service commission to render an adequate local service for the accommodation of the traveling public: *State ex rel. Great Northern R. Co. v. Public Serv. Com.*, 81 Wash. 275, 142 Pac. 684.

A finding by the public service commission that train service furnished the town of K. was inadequate, and that a change of schedule would be to the advantage of the inhabitants thereof, held warranted by the evidence: *State ex rel. Great Northern R. Co. v. Public Serv. Com.*, 81 Wash. 275, 142 Pac. 684.

An order requiring a railroad to designate the name of a station in its tariffs, folders and tickets as Bingen and White Salmon, held to be unreasonable: *State ex rel. Spokane, Portland & Seattle R. Co. v. Railroad Com.*, 69 Wash. 523, 125 Pac. 953, Ann. Cas. 1914A, 830.

Validity of statute or rule providing for reciprocal demurrage. 13 Ann. Cas. 964; 19 Ann. Cas. 1092; Ann. Cas. 1916E, 701.

§ 10396. [8626-60.] Weighing of Freight—Scale Tests.

The commission shall have power to enforce reasonable regulations for the weighing of cars and freight offered for shipment over any line of railroad, and to test the weights made by any railroad and scales used in weighing freight on cars. [L. '11, p. 576, § 60.]

See notes to § 10340.

§ 10397. [8626-61.*] Track Connections.

Whenever the commission shall find, after a hearing made upon complaint or upon its own motion, that the public necessities and conveniences would be subserved by having track connections made, between any two or more railroads at any of the points hereinafter specified, the commission shall order any two or more railroads of the same or similar gauge to make physical connections at any and all crossings, and at all points

where a railroad shall begin or terminate at or near any other railroad, and at or near all towns or cities, so that the cars of any such railroad company may be speedily transferred from one railroad to another, and shall order whether the expense thereof shall be borne jointly or otherwise. [L. '19, p. 431, § 1; L. '11, p. 576, § 61.]

See notes to § 10340.

Under the act of 1907, vesting the state railroad commission with power to make regulations concerning the sufficiency of the trackage, railroad connections, siding, etc., and to order additional trackage or siding constructed, the commission has power to order physical track connections between different railroads: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

Such act was not an interference with property, amounting to the taking of the same without due process of law; since the act provides for a review of the order of the commission by the superior court: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

Such act was not an unlawful delegation of legislative power on the theory that the legislature has established no standards or principles for the guidance of the commission, since the act provides in many places that the enforcement of its provisions shall be just, fair and reasonable: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

Power of commission to compel connections between public service corporations. *Ann. Cas.* 1915C, 850.

Delegation by legislature to railroad commission of power as to track connections and crossings. 32 L. R. A. (N. S.) 654.

§ 10398. [8626-62.] Sidetrack Connections.

Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, as herein provided, that application has been made by any shipper for a switching connection or connections with a lateral line of railway or private sidetrack owned, operated or controlled by such shipper, or that application has been made by any shipper for the installation of a sidetrack upon the property of such railroad, and that such switch connection or sidetrack is reasonably practicable, can be put in with reasonable safety, and the business therefor is sufficient to justify the same, and that the railroad company has refused to install or provide the same, the commission shall enter its order requiring such connection or the construction of such sidetrack: Provided, such shipper so to be served shall pay the legitimate cost and expense of constructing such connection or sidetrack as shall be determined in separate items by the commission, and before the railroad company shall be compelled to incur any cost in connection therewith the same shall be secured to the railroad company in such manner as the commission may require. Whenever such lateral line of railway, private sidetrack or sidetrack upon the property of the railroad company shall be constructed under the provisions of this section, any person or corporation shall be entitled to connect therewith or use the same upon the payment to the shipper incurring the primary expense of a reasonable proportion of the cost thereof, to be determined by the commission after notice to the interested parties: Provided, that such connection can be made without unreasonable interference with the right of such shipper incurring the primary expense. [L. '11, p. 576, § 62.]

See notes to § 10340.

Cited in 77 Wash. 536.

This section is not unconstitutional as depriving the company of property with-

out due process of law; since the spur is to be built entirely on land of the company held for public use, there is a full

hearing, and the spur is to be paid for by others, and is open to the use of all shippers on reasonable terms: State ex rel. Chicago, Milwaukee & Puget Sound R. Co. v. Public Serv. Com., 77 Wash. 529, 137 Pac. 1057, Ann. Cas. 1915D, 202, L. R. A. 1918B, 786.

An order requiring an extension of a spur-track so as to permit teams to unload at all points of the extension held to be unreasonable: State ex rel. Great Northern R. Co. v. Railroad Com., 60 Wash. 218, 110 Pac. 1075.

The sufficiency of a demand for side-track connections cannot be questioned by a railroad company, where it appears that, after some correspondence, its general counsel absolutely refused to entertain further negotiations looking to the installation of any kind of a spur-track at or near the point in question, and its division superintendent testified that he would not have recommended any kind of a spur there, and none would have been put in except on his recommendation, and no objection was made by the company to the form or sufficiency of the demand: State ex rel. Chicago, Milwaukee & Puget Sound R. Co. v. Public Serv. Com., 77

Wash. 529, 137 Pac. 1057, Ann. Cas. 1915D, 202, L. R. A. 1918B, 786.

A spur-track intended primarily for the immediate use of a single shipper, open upon reasonable terms to the use of the public, is a public use: State ex rel. Chicago, Milwaukee & Puget Sound R. Co. v. Public Serv. Com., 77 Wash. 529, 137 Pac. 1057, Ann. Cas. 1915D, 202, L. R. A. 1918B, 786.

Whether an order of the public service commission requiring the installation of industrial sidetrack connections interferes with interstate commerce is a question of fact, and it will not be so held where the evidence fails to show any appreciable effect upon interstate business, and it appears that the spur is reasonable and practicable, and can be operated with reasonable safety: State ex rel. Chicago, Milwaukee & Puget Sound R. Co. v. Public Serv. Com., 77 Wash. 529, 137 Pac. 1057, Ann. Cas. 1915D, 202, L. R. A. 1918B, 786.

Power of public service commission to compel railroad to build side-tracks. Ann. Cas. 1915D, 210; Ann. Cas. 1918E, 339.

§ 10399. [8626-63.] Investigation of Wrecks.

Every public service company is hereby required to give immediate notice to the commission of every accident resulting in death or injury to any person occurring on its lines, plant or system, in such manner as the commission may prescribe. The commission may require reports to be made by any common carrier of all wrecks, collisions or derailments occurring on the line of any such common carrier. Such notice shall not be admitted as evidence or used for any purpose against such public service company giving such notice in any suit or action for damages growing out of any matter mentioned in such notice.

The commission is hereby authorized and directed to investigate all accidents that may occur upon the lines of any common carrier resulting in loss of life, to any passenger or employee, and may investigate any and all accidents or wrecks occurring on the line of any such common carrier, or any accident resulting in death or injury to any person occurring in connection with the plant or system of any public service company. Notice of such investigation shall be given in all cases for a sufficient length of time to enable the public service company affected to participate in the hearing and such notice may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission may deem necessary and proper to thoroughly ascertain the cause of the accident or wreck and fix the responsibility therefor. Such examination and investigation may be conducted by the inspector or any deputy inspector, and such inspector or deputy inspector shall have the power to administer oaths, issue subpoenas and compel the attendance of witnesses, and when such examination is conducted by the inspector or deputy inspector, he shall make a full and complete report thereof to the commission. [L. '11, p. 577, § 63.]

§ 10400. [8626-64.] Power of Commission to Order Facilities, Repairs or Changes.

Whenever the commission shall, after a hearing had upon its own motion or upon complaint, find that, additional tracks, switches, terminals, terminal facilities, stations, motive power or any other property, apparatus, equipment, facilities or device for use by any common carrier in, or in connection with the transportation of persons or property, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property, the commission may, after a hearing, either on its own motion or after complaint, make and serve an order directing such repairs, improvements, changes or additions to be made. [L. '11, p. 578, § 64.]

Location and Establishment of Stations
—**Powers of Courts Irrespective of Statute:** See Remington's Digest, R. R., § 13; Northern Pac. R. Co. v. Territory ex rel. Dustin, 3 W. T. 303, 13 Pac. 604. Reversed on writ of error in Northern Pac. R. Co. v. Territory, 142 U. S. 492, 35 L. Ed. 1092, 12 Sup. Ct. Rep. 283.

Orders requiring a railroad to furnish flush toilets at a depot in a small town and running water for drinking purposes, held unreasonable: State ex rel. Great Northern R. Co. v. Railroad Com., 60 Wash. 218, 110 Pac. 1075.

Under this act, the power to fix the time within which a depot must be completed is conferred by necessary implication: State ex rel. Railroad Com. v. Great Northern R. Co., 68 Wash. 257, 123 Pac. 8.

Removal or Abandonment of Stations.—An order of the railroad commission requiring a railroad depot to be moved five hundred feet, in a town of seventy-five people, is unreasonable, where the only reason therefor was to bring the depot to the point on the railroad nearest the busi-

ness center of the town: State ex rel. Great Northern R. Co. v. Railroad Com., 60 Wash. 218, 110 Pac. 1075.

Injunction does not lie to prevent a street railway company from abandoning that part of its road lying between two stations served by a competing road lying closely parallel, merely because the abandonment necessarily results in depriving all persons to whom both roads are accessible of competitive service; since the whole theory of the public service law is opposed to the idea that the public will be better served with two closely parallel lines of road where one road will amply suffice: Day v. Tacoma R. & Power Co., 80 Wash. 161, 141 Pac. 347, L. R. A. 1915B, 547.

Under this and other sections, the public service commission was not authorized to change city street grades or exercise the power of eminent domain for the purpose of eliminating railroad grade crossings in a city: Spokane v. Spokane & Inland Empire R. Co., 75 Wash. 651, 135 Pac. 636.

§ 10401. [8626-65.] Commission to Investigate Equipment, Track, etc.

If upon investigation the commission shall find that the equipment or appliances in connection therewith, or the apparatus, tracks, bridges or other structures of any common carrier are defective, and that the operation thereof is dangerous to the employees of such common carrier or to the public, it shall immediately give notice to the superintendent or other officer of such common carrier of the repairs or reconstruction necessary to place the same in a safe condition, and may also prescribe the rate of speed for trains or cars passing over such dangerous or defective track, bridge or other structure until the repairs or reconstruction required are made, and may also prescribe the time within which the same shall be made. Or if, in its opinion, it is needful or proper, it may forbid the running of trains or cars over any defective track, bridge or structure until the same be repaired and placed in a safe condition.

There shall be no appeal from or action to review any order of the commission made under the provisions of this section. [L. '11, p. 579, § 65.]

§ 10402. [8626-66.] Safety Appliances—Fixing of Standards.

Each locomotive on every railroad in this state shall be equipped with power-driving wheel brakes and appliances for operating the train brake system, so equipped that the engineer on the locomotive drawing such train can control its speed without requiring brakeman to use the common hand-brakes for that purpose, with couplers coupling automatically by impact, which can be coupled or uncoupled without the necessity of men going between the locomotive and the locomotive or car to which the same is being coupled or from which it is being uncoupled, and with proper flanges, sill steps and grab-irons, or uncoupling levers in lieu of such grab-irons, and, excepting such as may be assigned to daylight runs or switching service exclusively, with electric headlights of approved design and capacity (except that locomotives may be operated without such headlight upon permission and order of the commission), with proper cocks, valves, pistons, valve stems and appliances which will prevent the escape of steam in such volume as to obstruct the view of the engineman operating such locomotive, and, in the case of locomotives used in the switching service, with proper foot-boards and toe-boards, and with a headlight on each end, and with such other appliances, apparatus and machinery necessary for safe operation of the locomotive or the train to which the same is attached, as the commission may prescribe: Provided, that in case of emergency the commission may permit the use of road engines in switching service.

Each car shall be equipped with couplers coupling automatically, which can be coupled or uncoupled without the necessity of men going between the ends of the cars, with power brakes, with proper hand-brakes, sill steps and grab-irons, and, where secure ladders and running-boards are required, with such ladders and running-boards, and all cars having ladders shall also be equipped with secure handholds or grab-irons on their roofs at the tops of such ladders, and with such other appliances necessary for the safe operation of such cars, and the trains containing such cars, as may be prescribed by the commission: Provided, that in the loading and hauling of long commodities requiring more than one car, hand-brakes may be omitted from all save one of the cars, while they are thus combined for such purpose: And provided further, that in the operation of trains not less than eighty-five per cent of the cars in such train, which are associated together, shall have their power brakes used and operated by the engineer of the locomotive drawing such train.

Every street-car shall be equipped with proper and efficient brakes, steps, grab-irons or hand-rails, fenders or aprons or pilots, and with such other appliances, apparatus and machinery necessary for the safe operation of such street-car as the commission may prescribe.

The commission shall, as soon as practicable, after the taking effect of this act, designate the number, dimensions, location and manner of application of the appliance provided for herein, or such as may be prescribed by the commission, and shall give notice of such designation to all

railroad companies and street railroad companies subject to the provisions of this act, by such means as the commission may deem proper, and thereafter such number, dimensions, location and manner of application as designated by the commission shall remain as the standards of equipment to be used on all cars and locomotives subject to the provisions of this act. The commission shall have power to add to, change or modify said standards of equipment at any time or to provide different standards under different circumstances and conditions: Provided, that the commission may, upon full hearing, for good cause, extend the period within which any railroad or street railroad may comply with the provisions of this section with respect to the equipment of locomotives or cars actually in service at the date of the passage of this act. The commission is hereby given authority to fix the time within which such modification or change shall become effective or obligatory. After the time so fixed it shall be unlawful to use any car, motor, or locomotive which does not comply with the standards so prescribed by the commission: Provided, that when any car, motor or locomotive shall have been properly equipped as provided in this act, and such equipment shall have become defective or insecure while such car, motor or locomotive was being used by such railroad company upon its line of railroad, such car, motor or locomotive may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car, motor or locomotive can be repaired, without liability for the penalties imposed herein if such movement is necessary to make such repairs, and such repairs cannot reasonably be made except at such repair point. Nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars in revenue trains, or in association with other cars that are commercially used, unless such defective cars contain livestock or perishable freight.

It shall be unlawful for any railroad company or street railroad company to use or operate any car, motor, locomotive or train that is defective, or any car, motor, locomotive or train upon which any appliance, machinery or attachment thereto belonging is defective, or to knowingly operate its train over any defective track, bridge or other structure, excepting in cases of emergency and under proper precautions: Provided, that this section shall not apply to boarding and outfit cars when moved as work trains, or to trains consisting wholly of logging trucks or of logging trucks and a passenger-car or caboose at the rear end thereof, or of logging trucks and not to exceed five freight-cars at the rear end thereof. [L. '11, p. 579, § 66.]

§ 10403. [8626-67.] Duties of Inspector of Safety Appliances.

It shall be the duty of the inspector of tracks, bridges, structures, and equipment, and such deputies as may be appointed to inspect all equipment, and appliances connected therewith, and all apparatus, tracks, bridges and structures, depots and facilities and accommodations connected therewith, and facilities and accommodations furnished for the use of employees, and make such reports of his inspection to the commission as may be required. He shall, on discovering any defective equipment or appliances connected therewith, rendering the use of such

equipment dangerous, immediately report the same to the superintendent of the road on which it is found, and to the proper official at the nearest point where such defect is discovered, describing the defect. Such inspector may, on the discovery of any defect rendering the use of any car, motor or locomotive dangerous, condemn such car, motor or locomotive, and order the same out of service until repaired and put in good working order. He shall, on discovering any track, bridge or structure defective or unsafe in any particular, report such condition to the commission, and, in addition thereto, report the same to the official in charge of the division of such railroad upon which such defect is found. In case any track, bridge or structure is found so defective as to be dangerous to the employees or public for a train or trains to be operated over the same, the inspector is hereby authorized to condemn such track, bridge or structure and notify the commission and the office in charge of the division of such railroad where such defect is found of his action concerning the same, reporting in detail the defect complained of, and the work or improvements necessary to repair such defect. He shall also report to the commission the violation of any law governing, controlling or affecting the conduct of public service companies in this state.

The inspector, or such deputies as may be appointed, shall have the right and privilege of riding on any locomotive, either on freight or passenger trains, or on the caboose of any freight train, for the purpose of inspecting the track or any railroad in the state: Provided, that the engineer or conductor in charge of any such locomotive or caboose may require such inspector to produce his authority, under the seal of the commission, showing that he is such inspector or deputy inspector.

The inspector, or such deputy inspector or inspectors as may be appointed, shall, when required by the commission, inspect any street railroad, gas plant, electrical plant, water system, telephone line or telegraph line, and upon discovering any defective or dangerous track, bridge, structure, equipment, apparatus, machinery, appliance, facility, instrumentality or building, rendering the use of the same dangerous to the public or to the employees of the company owning or operating the same, report the same to the commission and to the official in charge of such road, plant, system or line. [L. '11, p. 582, § 67.]

See *supra*, § 10838, duties of division of safety.

§ 10404. [8626-68.] Safeguarding Frogs and Switches.

Every railroad and street railroad operating in this state shall so adjust, fill, block and securely guard all frogs, switches and guard-rails so as to protect and prevent the feet of persons being caught therein. [L. '11, p. 583, § 68.]

§ 10405. [8626-69.] Trains shall Stop at Railroad Crossings.

All railroads and street railroads, operating in this state shall cause their trains and cars to come to a full stop at a distance not greater than five hundred (500) feet before crossing the tracks of another railroad crossing at grade, excepting at crossings where there are

established signal towers and signal men, interlocking plants or gates. [L. '11, p. 584, § 69.]

See notes to § 10516.

Cited in 94 Wash. 16.

§ 10406. [8626-70.] Gas Plants, Electrical Plants and Water Systems—Repairs, Improvements and Changes.

Whenever the commission shall find, after hearing had upon its own motion or upon complaint, that repairs or improvements to, or changes in, any gas plant, electrical plant or water system ought to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for manufacturing, distributing or supplying gas, electricity or water, the commission may enter an order directing that such reasonable repairs, improvements, changes, additions, or extensions of such gas plant, electrical plant or water system be made. [L. '11, p. 584, § 70.]

See notes to § 10340.

§ 10407. [8626-71.] Telephone and Telegraph Companies — Repairs, Improvements and Changes.

Whenever the commission shall find, after a hearing had on its own motion, or upon complaint, that repairs or improvements to, or changes in, any telegraph line or telephone line ought reasonably to be made, or that any additions or extensions should reasonably be made thereto in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for telegraphic or telephonic communications, the commission shall make and serve an order directing that such repairs, improvements, changes, additions or extensions be made in the manner to be specified therein. [L. '11, p. 584, § 71.]

See notes to § 10340.

§ 10408. [8626-72.] Docks, Wharves and Warehouses—Repairs, Improvements and Changes.

Whenever the commission shall find, after hearing had upon its own motion or upon complaint, that repairs or improvements to, or changes in, any dock, wharf or warehouse ought reasonably to be made, or that any additions or extensions should reasonably be made thereto in order to promote the security of adequate service or facilities for the receipt, storage or handling of freight, the commission shall make and serve an order directing that such repairs, improvements, changes, additions or extensions shall be made in the manner specified therein. [L. '11, p. 585, § 72.]

See notes to § 10340.

§ 10409. [8626-73.] Physical Connections and Joint Rates Between Telephone and Telegraph Companies.

Whenever the commission shall find that any two or more telephone companies, whose lines form a continuous line of communication, or

could be made to do so by the construction and maintenance of suitable connections for the transfer of messages or conversations at common points between different localities which are not reached by the line of either company alone, and that such connections or facilities for the transfer of messages or conversations at common points can reasonably be made, an efficient service obtained and that a necessity exists therefor, or shall find that any two or more telegraph or telephone companies, have failed to establish joint rates or charges for service by or over their said lines, and that joint rates or charges ought to be established, the commission may, by its order, require such connection to be made, and that conversations be transmitted and messages transferred, and prescribe through lines and joint rates and charges to be made, and to be used, observed and in force in the future, and fix the same by order to be served upon the company or companies affected. [L. '11, p. 585, § 73.]

See notes to § 10340.

Cited in 85 Wash. 36.

Mandamus to compel a telephone company to comply with orders; burden to show unreasonableness and evidence admissible; and power to order a physical connection, which must be without discrimination and with provisions for payment of costs and reasonable regulations: State ex rel. Public Serv. Com. v. Skagit River Tel. & Tel. Co., 85 Wash. 29, 147 Pac. 885.

When such an order is void as a taking of property without due process. Id.

Where two telephone companies are willing to make a physical connection upon terms agreed upon, the public service commission, in ordering the connection, has no power to provide for the cost: State ex rel. Public Serv. Com. v. Skagit River Tel. & Tel. Co., 89 Wash. 625, 155 Pac. 144.

Under this section, the commission has no power to establish the rates or tolls until the companies "have failed" to do

so after the connection is ordered: State ex rel. Public Service Com. v. Skagit River Tel. & Tel. Co., 89 Wash. 625, 155 Pac. 144.

Likewise, the commission in such a case has no authority in the first instance to make rules or regulations to prevent interference between one of such connected companies and a third company, when using the lines of the other connected company; as such interference must be avoided by mechanical means or operating rules put in force by the companies: State ex rel. Public Serv. Com. v. Skagit River Tel. & Tel. Co., 89 Wash. 625, 155 Pac. 144.

Power of public service commission to compel public utilities to make connections with each other. Ann. Cas. 1915C, 850.

Validity of contracts between telephone companies for exclusive connections. 36 L. R. A. (N. S.) 124.

§ 10410. [8626-74.] Inspectors of Gas, Electric and Water Meters.

The commission may appoint inspectors of gas and water meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all gas and water meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat or power, or the quantity of water furnished for any purpose by any public service company to or for the use of any person or corporation, and when found to be or made to be correct such inspectors shall seal all such meters and each of them with some suitable device to be prescribed by the commission.

No public service company shall thereafter furnish, set or put in use any gas or water meter which shall not have been inspected, proved and sealed by an inspector of the commission under such rules and regulations as the company may prescribe.

The commission may appoint inspectors of electric meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat or power by any public service company to or for the use of any person or corporation, and to inspect, examine and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters, and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device to be prescribed by the commission. No public service company shall furnish, set or put in use any electric meters the type of which shall not have been approved by the commission.

Every gas company, electrical company and water company shall prepare and maintain such suitable premises, apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas, electric or water meters furnished for use by it by which apparatus every meter may be tested.

If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested, and if the same, on being so tested, shall be found to be more than four per centum if an electric meter, or more than two per centum if a gas meter, or more than two per centum if a water meter, defective or incorrect to the prejudice of the consumer, the expense of such inspection and test shall be borne by the gas company, electrical company or water company, and if the same, on being so tested shall be found to be correct within the limits of error prescribed by the provisions of this section, the expense of such inspection and test shall be borne by the consumer.

The commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary, and shall fix the uniform and reasonable charges for the inspection and testing of meters upon complaint. [L. '11, p. 585, § 74.]

See notes to § 10340.

See *infra*, § 10838, inspection.

REFERRED ACT.

§ 10412. Certificate of Public Necessity for New Company to Operate in Territory Covered.

No public service company or prospective public service company shall hereafter construct, extend or thereafter maintain or operate any part of its plant, system or facilities for the purpose of rendering service in a locality wherein similar service is then being rendered by any other public service company in this state, without first applying for and obtaining the certificate of public necessity and convenience from the director of public works, as herein provided. Upon the filing of an application for such certificate the director of public works shall give reasonable notice in writing to the public service company then furnishing such service in such locality or vicinity of the time and place when such application will be heard, and after hearing and investigation if

the director of public works finds from the evidence that the public necessity and convenience require that such service be furnished by the public service company or prospective public service company applying for such certificate, the director of public works shall by order grant such certificate of public necessity and convenience. Such order shall specify and define the character, extent and location of the service to be furnished under said certificate and the time within which such service shall be furnished; and any such certificate may be recalled and made null and void in whole or in part by the director of public works in the event that the grantee of such certificate shall fail to comply with any of the provisions or conditions thereof: Provided, however, that this section shall not be construed as requiring such application or certificate for the extension by any public service company, whether privately or municipally owned or operated, of its physical property or service within the locality in which such public service company may now be furnishing similar service to the public or as requiring such application or certificate for the construction of additional plants or extensions of existing plants outside the limits of such locality for making such service within such locality. It shall be the duty of the director of public works, either upon his own motion or upon the complaint of any public service company, to enforce the provisions of this section. Any public service company or prospective public service company may appeal from any order of the director of public works rendered under this section in the same manner and under the same procedure as specified in this act: Provided, however, that the superior court shall require the filing of an adequate supersedeas bond and the pendency of any writ of review shall stay or suspend the operation of any order of the director of public works granting such certificate of necessity and convenience: Provided, however, that until such time as the director of public works shall be appointed and qualified and shall assume and exercise the duties of his office, all of the powers and duties imposed upon the director of public works by the provisions of this act shall be exercised and performed by the Public Service Commission of the state of Washington: Provided, further, that nothing in this act shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the safety, adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or enforced affecting any water system owned and operated by any city or town: Provided, further, that any municipal corporation may perfect an appeal without the filing of a supersedeas bond. [L. '21, p. 175, § 1.]

This section is subjected to referendum and suspended, until the general election in November, 1922.

§ 10413. [8626-75.] Power to Administer Oaths.

Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the fees and mileage of the witness have been paid or tendered to the witness for his attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. In all proceedings before the commission the commission shall have the right, in their discretion, to limit the number of witnesses testifying upon any subject or proceeding to be inquired of before the commission. [L. '11, p. 587, § 75.]

See notes to § 10340.

§ 10414. [8626-76.] Depositions—Service of Process—Witness' Fees.

The commission shall have the right to take the testimony of any witness by deposition, and for that purpose the attendance of witnesses and the production of books, waybills, documents, papers and accounts may be enforced in the same manner as in the case of hearings before the commission, or any member thereof. Process issued under the provisions of this act shall be served as in civil cases. Each witness who shall appear before the commission under subpoena shall receive for his attendance three dollars (\$3) per day and five (5) cents per mile traveled by the nearest practicable route in going and returning from the place of hearing: Provided, that no witness shall be entitled to fees or mileage from the state of Washington when summoned at the instance of the public service corporations affected. The claim by any witness that any testimony sought to be elicited may tend to incriminate him shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal

proceeding, excepting in a prosecution for perjury. The commissioner shall have power to compel the attendance of witnesses at any place within the state. [L. '11, p. 588, § 76.]

§ 10415. [8626-77.] Inspection of Books, Papers and Documents.

The commission and each commissioner, or any person employed by the commission, shall have the right, and at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public service company in relation thereto, and with reference to the affairs of such company: Provided, that any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection. [L. '11, p. 589, § 77.]

See notes to § 10340.

§ 10416. [8626-78.] Reports.

Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to passengers, employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate traffic, the nature of the traffic movement showing the percentage of the ton miles each class of commodity bears to the total ton mileage, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and the proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such report shall also contain such information in relation to rates, charges or regulations concerning fares, charges or freight, or agreements, arrangements or contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this act, prescribe the period of time within which all public service companies subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month

prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the commission at its office in Olympia within three months after the close of the designated year for which such report is made, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires.

The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies, including the accounts, records and memoranda of the movement of traffic, sales of its product, the receipts and expenditures of money. The commission shall at all times have access to all accounts, records and memoranda kept by public service companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commission, to examine witnesses and to inspect and examine any and all accounts, records, and memoranda kept by such companies. The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose line or lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commission concerning the traffic movement, receipts and expenditures appertaining to those parts of the line within the state. [L. '11, p. 589, § 78.]

See notes to § 10340.

§ 10417. Payment of Fee.

That hereafter every person, firm, company and corporation making and filing with the director of public works the annual statement required by section 10416, shall, at the time of filing such statement, pay to the director of public works, a fee, based on the gross operating revenues as follows:

When the annual gross operating revenue of the public utility is	
\$5,000 and less than \$10,000.....	\$10 00
When the annual gross operating revenue of the public utility is	
\$10,000 and less than \$25,000.....	20 00
When the annual gross operating revenue of the public utility is	
\$25,000 and less than \$50,000.....	30 00
When the annual gross operating revenue of the public utility is	
\$50,000 and less than \$100,000.....	40 00
When the annual gross operating revenue of the public utility is	
\$100,000 and less than \$250,000.....	50 00
When the annual gross operating revenue of the public utility is	
\$250,000 and less than \$500,000.....	100 00

When the annual gross operating revenue of the public utility is \$1,000,000 and less than \$2,000,000.....	200 00
When the annual gross operating revenue of the public utility is \$2,000,000	200 00
When the annual gross operating revenue of the public utility is \$2,000,000 and less than \$3,000,000.....	300 00
When the annual gross operating revenue of the public utility is \$3,000,000 and less than \$4,000,000.....	400 00
When the annual gross operating revenue of the public utility is \$4,000,000 and less than \$5,000,000.....	500 00
When the annual gross operating revenue of the public utility is \$5,000,000 or over.....	600 00
[L. '21, p. 354, § 1.]	

§ 10418. Disposition of Fees.

All sums collected by the director of public works under the provisions of this act shall within thirty days after their receipt be paid to the state treasurer, and by him deposited in a fund to be known as the public service revolving fund. [L. '21, p. 354, § 2.]

§ 10419. Penalty for Failure to Pay Fees.

Every person, firm, company or corporation, or the officers and agents thereof, failing or neglecting to pay the fees herein required shall be guilty of a misdemeanor, and in addition thereto shall be subject to a penalty of \$25 for each and every day that the fee remains unpaid after it becomes due, said penalty to be collected by the director of public works in a civil action. All fines and penalties collected under the provisions of this act shall be deposited into the public service revolving fund of the state treasury. [L. '21, p. 355, § 3.]

§ 10421. [8626-79.] Production of Books and Records.

In case any public service company shall refuse to exhibit at its principal office in the United States any book, record or document to the commission or to any member thereof, or to any agent or employee thereof properly authorized, or to furnish a sworn copy of such book, record or document on demand the commission may require from any such company the production within the state, at such time and place as it may designate, of any books, records or documents kept by such company without the state.

The commission may require from any public service company the production of any books, records or documents kept by such company in any office or place without the state of Washington. Such demand shall be served upon the public service company in the manner provided for the service of orders herein. Such public service company shall have the right to appear before the commission and show cause, if any there be, why such order should not be complied with and such order shall be made after such hearing as the commission may deem proper. [L. '11, p. 591, § 79.]

§ 10422. [8626-80.] Complaints.

Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: Provided, that no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telephone company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telephone service: Provided, further, that when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rules shall apply and pertain with regard to the joinder of complaints and parties as herein provided: Provided, all grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of

such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this act may be prescribed by the commission. [L. '11, p. 592, § 80; L. '13, p. 452, § 1.]

See notes to § 10340.

Cited in 76 Wash. 498, 499; 78 Wash. 206; 80 Wash. 220, 655; 92 Wash. 343; 97 Wash. 599; 107 Wash. 19, 20.

Under Laws of 1905, page 145, section 3, authorizing the railroad commission to determine the reasonableness of rates, "Upon complaint made," and after a full hearing, the commission cannot, upon a complaint as to certain distance tariffs, make an order that certain other commodity rates shall not be increased, where the complaint alleged the latter to be fair and reasonable; since no issue was presented thereon and no order could be made relating thereto without notice and hearing; the remedy for an increase of such rates being by another complaint: State ex rel. Great Northern R. Co. v. Railroad Com., 47 Wash. 627, 92 Pac. 457.

The act of 1907, authorizing the state railroad commission to hear and determine complaints against railroad companies as a mediatory court on matters of railroad regulation is not objectionable in that the commission may be the accuser and file the complaint against the companies, there being no presumption of partiality or unfairness from such fact: State ex rel. Oregon R. & Nav. Co. v. Railroad Com., 52 Wash. 17, 100 Pac. 179.

A complaint filed by the railroad commission before itself, alleging that the depot facilities of the defendant at its various stations are inadequate, is a sufficient compliance with Rem. & Bal. Code, section 8632, requiring all grievances to be set out in the complaint; and confers jurisdiction to enter an order requiring the company to erect suitable depots at certain stations within a specified time: State ex rel. Railroad Com. v. Oregon R. & Nav. Co., 68 Wash. 160, 123 Pac. 3.

A consumer, discriminated against by a water company in the matter of rates

charged for water, has authority to file a complaint with the public service commission, under this section; the proviso pertaining only to complaints affecting the reasonableness of the schedule of rates or charges of a public service corporation, and not abridging the authority of an individual to complain of a discrimination in rates: State ex rel. Goss v. Metaline Falls Light & Water Co., 80 Wash. 652, 141 Pac. 1142.

Where an order of the public service commission was not superseded and became effective in twenty days, it will be presumed that it was complied with and therefore it cannot be objected to as too indefinite to be enforced: State ex rel. Northern Pac. R. Co. v. Public Serv. Com., 95 Wash. 376, 163 Pac. 1143, 166 Pac. 793.

Irregularity in fixing gas rates without the ten days' notice required by this section, is not available to a city which was not required to litigate the issue until after the fullest opportunity to do so; and the city cannot deprive the commission of jurisdiction by filing a complaint within the ten days: State ex rel. Seattle v. Public Serv. Com., 107 Wash. 17, 180 Pac. 913.

Under this section, an order of the commission fixing reasonable rates after a hearing, without fixing any time for it to become effective, takes effect and becomes operative twenty days after the service thereof: State ex rel. Great Northern R. Co. v. Public Serv. Com., 80 Wash. 218, 141 Pac. 351.

Public necessity for a joint freight rate does not depend upon the number of persons asking for the change, and may be based upon the application of but one person: State ex rel. Northern Pac. R. Co. v. Public Serv. Com., 95 Wash. 376, 163 Pac. 1143, 166 Pac. 793.

§ 10423. [8626-81.] Hearings, Orders and Record.

At the time fixed for the hearing mentioned in the preceding section, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days

after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [L. '11, p. 593, § 81.]

See notes to § 10340.

Cited in 76 Wash. 498, 499; 80 Wash. 220; 95 Wash. 380; 97 Wash. 599, 600.

Under Rem. & Bal. Code, section 8629, providing that an order of the railroad commission for furnishing additional facilities shall be served on the company by delivering a certified copy, an oral announcement by the chairman at the end of a hearing is not an order binding on the company, and does not preclude the commission from later entering a formal order and serving a copy on the company: *State ex rel. Railroad Com. v. Oregon R. & Nav. Co.*, 68 Wash. 160, 123 Pac. 3.

The procedure before the state railroad commission upon disputed hearings concerning the regulation of railroads is not objectionable for lack of due process because the attendance of witnesses cannot be compelled; since attendance may be compelled through an order of the superior court, under section 4, Laws of 1907, page 544: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

Nor is it objectionable for want of penalties for perjury, since the general law of perjury applies: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

The railroad commission act creating a regulative railroad commission with executive and administrative duties may also confer on the commission judicial powers as a mediatory court, since the constitutional division of governmental

powers into three separate departments applies only in a limited sense, and does not restrict one set of officers to one department exclusively: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

The act is not objectionable in that it empowers the commission to limit the number of witnesses: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

Objection that complaint of a railroad company's depot facilities at all its stations was too general and indefinite to authorize an inquiry as to the facilities at a specific station, is waived where the company entered upon the trial of the issue without objection, and took no appeal to the courts from the order of the commission requiring the erection of a depot: *State ex rel. Railroad Com. v. Oregon R. & Nav. Co.*, 68 Wash. 160, 123 Pac. 3.

Under the railroad commission act, making the commission an intermediate tribunal with original jurisdiction to hear and determine questions relating to the duty of common carriers to furnish additional transportation facilities, with power to order the construction of depots, its orders being final unless appealed from, under fixed penalties for violation of the order, the power to fix the time within which a depot must be completed is conferred by necessary implication: *State ex rel. Railroad Com. v. Great Northern R. Co.*, 68 Wash. 257, 123 Pac. 8.

§ 10424. [8626-82.] Increase in Rates—Suspension—Burden of Proof.

Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to increase any rate, fare, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed increase and the reasonableness and justice thereof, and pending such

hearing and the decision thereon the commission may suspend the operation of such rate, fare, charge, rental or toll for a period of ninety (90) days from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective: Provided, that if any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding sixty (60) days.

At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, fare, charge, rental or toll theretofore charged, the burden of proof to show that the changed schedule, classification, rule, or regulation, or the increased or proposed increased rate, fare, charge, rental or toll, is just and reasonable shall be upon the public service company.

The commission shall give to the hearing and decision of such questions preference over all other questions pending before it and shall decide the same as speedily as possible.

If the commission shall at the conclusion of the hearing refuse to permit such increase, either in whole or in part, no supersedeas shall be granted in any action or proceeding brought to review the order of the commission pending the final determination of such action by the superior court, or, if appealed to the supreme court, by such supreme court. [L. '15, p. 362, § 1. Cf. L. '11, p. 594, § 82.]

See notes to § 10340.

Cited in 76 Wash. 498, 499; 107 Wash. 21. seeking a reasonable increase in rates: State ex rel. Seattle v. Public Serv. Com.,

The burden of proof imposed by this section held sustained by a gas company 107 Wash. 17, 180 Pac. 913.

§ 10425. [8626-83.] Order Requiring Joint Action.

Whenever any order of the commission shall require joint action by two or more public service companies, such order shall specify that the same shall be made at their joint cost, and the companies affected shall have thirty days, or such further time, as the commission may prescribe, within which to agree upon the part or division of cost which each shall bear, and costs of operation and maintenance in the future, or the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations. If at the expiration of such time such companies shall fail to file with the commission a statement that an agreement has been made for the division or apportionment of such cost, the division of costs of operation and maintenance to be incurred in the future and the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations, the commission shall have authority, after further hearing, to enter a supplemental order fixing the proportion of such cost or expense to be borne by each company, and the manner in which the same shall be paid and secured. [L. '11, p. 594, § 83.]

See notes to § 10340.

Cited in 76 Wash. 630.

§ 10426. [8626-84.] Remunerative Charges cannot be Changed.

Whenever the commission shall find, after hearing had upon its own motion or upon complaint as herein provided, that any rate, toll, rental or charge which has been the subject of complaint and inquiry is sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, rental or charge shall not be changed, altered, abrogated or discontinued, nor shall there be any change in the classification which will change or alter such rate, toll, rental or charge without first obtaining the consent of the commission authorizing such change to be made. [L. '11, p. 595, § 84.]

See notes to § 10340.

Cited in 76 Wash. 501.

§ 10427. [8626-85.] Rules and Regulations.

The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the bulletining of trains, showing the time of arrival and departure of all trains, and the probable arrival and departure of delayed trains; the conditions to be contained in and become a part of contracts for transportation of persons and property, transmission and delivery of messages and conversations, and the furnishing and supply of gas, electricity and water, and any and all services concerning the same, or connected therewith; the time that station rooms and offices shall be kept open; rules governing demurrage and reciprocal demurrage, and to provide reasonable penalties to expedite the prompt movement of freight and release of cars, the limits of express deliveries in cities and towns, and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this act. Such rules and regulations shall be promulgated and issued by the commission on its own motion, and shall be served on the public service company affected thereby as other orders of the commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the commission, specifying the particular grounds of such objections. The commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes or modifications thereto, if any, as the evidence may justify. The commission shall have, and it is hereby given, power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings: Provided, no person desiring to be present at such hearing shall be denied permission. Actions may be instituted to review rules and regulations promulgated under this section as in the case of orders of the commission. [L. '11, p. 595, § 85.]

See notes to § 10340.

Cited in 94 Wash. 279—281, 285; 103 Wash. 648.

Reciprocal demurrage, see notes to § 10359.

The railroad commission having adopted

no rules as to the time for keeping a company's station rooms open, as empowered by this section, a passenger, in order to recover damages from a company's failure to keep its waiting-room open between the hours of 4:30 and 8

A. M., must allege and prove that its rules providing therefor are unreasonable: *Davenport v. Chicago Mil. & St. P. R. Co.*, 103 Wash. 645, 175 Pac. 298.

§ 10428. [8626-86.] Review.

Any complainant or any public service affected by any order of the commission, and deeming it to be contrary to law, may, within thirty days after the service of the order upon him, or it, apply to the superior court of the county in which such proceeding was instituted for a writ of review, for the purpose of having its reasonableness and lawfulness inquired into and determined. Such writ shall be made returnable not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected a further time be fixed by the court, and shall direct the commission to certify its record in the case to the court. On such return day the cause shall be heard by the court, unless for good cause shown the same be continued. Said cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing the superior court shall enter judgment either affirming or setting aside the order of the commission under review. In case said order is reversed by reason of the commission failing to receive testimony properly proffered, the court shall remand the cause to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new order based upon the evidence theretofore taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for further action. [L. '11, p. 596, § 86.]

See notes to § 10340.

Cited in 76 Wash. 628; 77 Wash. 2: 85 Wash. 34, 37, 39; 102 Wash. 590—592; 110 Wash. 132, 195; 112 Wash. 637.

A railroad company having failed to avail itself of the right to appeal from a decision of the railroad commission ordering the construction of a depot within a specified time, is precluded from questioning its reasonableness or legality: *State ex rel. Railroad Com. v. Great Northern R. Co.*, 68 Wash. 257, 123 Pac. 8.

It is not material that the act of 1907, page 538, conferring authority upon the state railroad commission to order track-age connections between railroads, and for an appeal therefrom, requires a review of the order in the superior court upon the testimony taken before the railroad commission; since the act provides a complete remedy if the commission refuses to accept competent evidence, by a reversal for error with instructions to receive the evidence proffered and rejected: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

Rem. & Bal. Code, section 8629, providing for appeals from orders of the superior court reviewing orders of the railroad commission reducing railroad rates, which the superior court in its discretion might "suspend" pending the hearing, and which

requires that bonds "shall" be required in addition to the usual appeal bond, was mandatory and contemplates a compensatory bond to supersede the judgment pending the appeal to the supreme court; especially in view of the provision allowing appeal "as in other civil cases": *State ex rel. Puget Sound Elec. R. v. Mitchell*, 60 Wash. 660, 111 Pac. 873.

Upon certiorari to review an order of the state railroad commission, the evidence used in other cases, under stipulation, may be certified by reference thereto in the return to the writ, it not being objected that it was not certified, as the form of certification was not material: *State ex rel. Oregon R. & Nav. Co. v. Railroad Com.*, 52 Wash. 17, 100 Pac. 179.

An order of the railroad commission reducing switch charges, based largely upon an old rate that had been continued in force for some time, and upon conflicting evidence as to the time consumed in the service and as to the other services performed by the switching crew, is aided by the presumption that a rate continued in force for some time is presumed to be remunerative and by the presumption that the findings of the commission are correct; and the order will not be disturbed on appeal although the testimony is

meager, indefinite, and unsatisfactory: Northern Pac. R. Co. v. Railroad Com., 57 Wash. 134, 106 Pac. 611.

The provision in the railway commission law, giving to railroad companies the right of appeal from orders of the superior court on reviewing orders of the railroad commission, was not intended to restrict the right of appeal to railroad companies: State ex rel. Great Northern R. Co. v. Railroad Com., 60 Wash. 218, 110 Pac. 1075.

The railroad commission has such an interest in defending its orders concerning railroad service and facilities made in proceedings instituted by it, as to entitle it to appeal to the supreme court from orders of the superior court reversing the orders of the commission: State ex rel. Great Northern R. Co. v. Railroad Com., 60 Wash. 218, 110 Pac. 1075.

This section is not limited to final orders, and a writ is properly quashed if not taken out within such time: State ex rel. Great Northern R. Co. v. Public Serv. Com., 76 Wash. 625, 137 Pac. 132.

Under this section, only the superior court in which the proceeding was instituted has any jurisdiction to issue a writ of review, and the word "instituted" cannot be construed to mean "originated" so as to give jurisdiction to review an order in a controversy "originating" in a county other than the one where the proceeding was "instituted": State ex rel. Russell v. Public Serv. Com., 75 Wash. 487, 135 Pac. 244.

The reasonableness and lawfulness of an order of the public service commission respecting train service to be rendered a town is reviewable, and the presumption

that the commission acted reasonably and lawfully must be clearly overthrown before the order will be set aside: State ex rel. Great Northern R. Co. v. Public Serv. Com., 81 Wash. 275, 142 Pac. 684.

Under this section, certiorari lies to review the commission's order for the repayment by a carrier of an overcharge; and the carrier need not first assail the order in an action to recover the overcharge authorized by section 10431: State ex rel. Tacoma Eastern R. Co. v. Public Serv. Com., 102 Wash. 589, 173 Pac. 626.

Where a judgment fixed tolls during the war period that might work an injustice, an appeal will not be dismissed as presenting only a moot question: State ex rel. Seattle v. Public Serv. Com., 110 Wash. 130, 188 Pac. 7.

A public service corporation cannot maintain an action to set aside an order of the public service commission, made without notice, annulling its previous judgment fixing rates, since the only remedy is by writ of review, in view of this section and § 10448, providing for such review and that an order is conclusive unless set aside in the review provided for in the act: Willapa Power Co. v. Public Serv. Com., 110 Wash. 193, 188 Pac. 464.

A decision ordering a recovery for overcharges on complaint filed by a shipper, and judgment on certiorari affirming the same are not decisions on the merits, reviewable on appeal; since they but give the shipper the right to sue on the award, and are merely prima facie evidence of the facts stated: State ex rel. Tacoma v. Public Serv. Com., 112 Wash. 629, 192 Pac. 1079.

§ 10429. [8626-87.] Supersedeas.

The pendency of any writ of review shall not of itself stay or suspend the operation of the order of the commission, but the superior court in its discretion may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit.

No order so restraining or suspending an order of the commission relating to rates, fares, charges, tolls or rentals, or rules or regulations, practices, classifications or contracts affecting the same, shall be made by the superior court otherwise than upon three days' notice and after hearing, and if a supersedeas is granted the order granting the same shall contain a specific finding, based upon evidence submitted to the court making the order, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage: Provided, however, that when any rate has been in force for any length of time exceeding one year, and such rate is advanced by the public service company, and the order of the commission reinstates such prior rate, in whole or in part, no supersedeas

shall be allowed in any case from such order pending the final determination of the cause in the superior court, or if appealed to the supreme court by such supreme court.

In case the order of the commission under review is superseded by the court, it shall require a bond, with good and sufficient surety, conditioned that such company petitioning for such review shall answer for all damages caused by the delay in the enforcement of the order of the commission, and all compensation for whatever sums for transportation, transmission or service any person or corporation shall be compelled to pay pending the review proceedings in excess of the sum such person or corporation would have been compelled to pay if the order of the commission had not been suspended.

The court may, in addition to or in lieu of the bond herein provided for, require such other or further security for the payment of such excess charges or damages as it may deem proper. [L. '11, p. 597, § 87.]

In view of this section, a railroad company is bound by an order of the railroad commission ordering the construction and maintenance of a spur-track to serve a warehouse, and cannot have the same reviewed on certiorari on the theory that

the order was a continuing one, where the company complied with the order by building the spur at the shipper's expense, which was paid, and took no appeal: Great Northern R. Co. v. Public Serv. Com., 69 Wash. 579, 125 Pac. 948.

§ 10430. [8626-88.] Appeal to the Supreme Court.

The commission, any public service company or any complainant may, within twenty days after the entry of judgment in the superior court in any action of review, prosecute an appeal to the supreme court of the state of Washington. The appellant shall have fifty days after the entry of such judgment in which to serve and file his opening brief, and the respondent shall have thirty days after the service of such opening brief in which to answer the same. The appellant shall have twenty days after the service of respondent's brief in which to reply to the same. After the filing of such brief, or the expiration of the time for filing briefs, the cause shall be assigned for hearing at the earliest motion day of the court, or at such other time as the court shall fix, and the clerk of the court shall notify the attorneys for the respective parties of the date set for the hearing in time to permit the parties to participate in the hearing. Such appeal shall be taken by giving a notice of appeal in open court at the time of the rendition of judgment, or by the service and filing of a notice of appeal within twenty days from and after the entry of the judgment.

The original transcript of the record and testimony filed in the superior court in any action to review an order of the commission, together with a transcript of the proceedings in the superior court, shall constitute the record on appeal to the supreme court.

No appeal shall be effective, when taken by a public service company or a complainant, unless a cost bond on appeal in the sum of two hundred dollars (\$200) shall be filed within five days after the service of the notice of appeal.

The superior court may, in its discretion, suspend its judgment pending the hearing in the supreme court, upon the filing of a bond, with a

good and sufficient surety, conditioned as provided for bonds upon actions for review, or upon such other or further terms and conditions as it may deem proper. The general laws relating to appeals to the supreme court shall, so far as applicable and not in conflict with the provisions of this act, apply to appeals taken under the provisions of this act. [L. '11, p. 598, § 88.]

See notes to § 10340.

§ 10431. [8626-89.] Rehearings.

Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: Provided, that no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission. [L. '11, p. 599, § 89.]

§ 10432. [8626-90.] Commission may Change Orders.

The commission may at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated by it, and any order or rule rescinding, altering or amending any prior order or rule shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules. [L. '11, p. 600, § 90.]

§ 10433. [8626-91.] Overcharge.

When complaint has been made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission shall determine that the public service company has charged an excessive or exorbitant

amount for such service, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, with interest from the date of collection.

If the public service company does not comply with the order for the payment of the overcharge within the time limited in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and in such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated. If the complainant shall prevail in such action, he shall be allowed a reasonable attorney's fee, to be fixed and collected as part of the costs of the suit. All complaints concerning overcharges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. [L. '11, p. 600, § 91.]

See *infra*, § 10435, judgment may be entered in favor of the director of public works for amount of overcharge.

Cited in 97 Wash. 598, 600, 603; 99 Wash. 40, 45; 102 Wash. 590, 592; 110 Wash. 399; 112 Wash. 631, 634.

This section is an exclusive remedy to the extent that it requires a submission of the action to the public service commission within two years as a condition precedent to the right to maintain an action; and it is not unconstitutional or beyond the power of the legislature, as curtailing the common law, as declared by Constitution, Article XII, section 15, compelling fairness in freight charges, to provide an inquiry by a board skilled in the science, as a prerequisite to the institution of a suit and within a definite time; since there is no abolition of the remedy and no vested right in procedure: *Hewitt Logging Co. v. Northern Pac. R. Co.*, 97 Wash. 597, 166 Pac. 1153.

It is a condition precedent to an action to recover overcharges that the public service commission determines the amount, under this section; hence an order of the public service commission does not furnish a sufficient basis for action where it does not designate the individual shippers entitled to recover nor fix the amount due to each: *Belcher v. Tacoma Eastern R. Co.*, 99 Wash. 34, 168 Pac. 782.

Where a railroad company invoked the aid of the public service commission to cancel charges which were admitted to be unjust and discriminatory, and undertook with the commission to make a refund to all claimants, it cannot invoke the statute of limitations provided by this section, requiring all claims for overcharges to be filed with the commission within two years from the time the cause of action accrues: *Belcher v. Tacoma Eastern R. Co.*, 99 Wash. 34, 168 Pac. 782.

In such case, the railroad's petition revives claims for overcharges that theretofore had been barred by lapse of time; since claims arising out of a violation of

the long and short haul do not rest in tort, but in implied assumpsit: *Belcher v. Tacoma Eastern R. Co.*, 99 Wash. 34, 168 Pac. 782.

The public service commission has jurisdiction to investigate a charge of discrimination growing out of the violation of the long and short haul provision, under the comprehensive provisions of this section: *Belcher v. Tacoma Eastern R. Co.*, 99 Wash. 34, 168 Pac. 782.

Under section 10428, authorizing an appeal from "any order," certiorari lies to renew an order for the repayment of an overcharge: *State ex rel. Tacoma Eastern R. Co. v. Public Serv. Com.*, 102 Wash. 589, 173 Pac. 626.

Where a telephone company put into effect and collected a schedule of rates in excess of the rates fixed by its franchise, before the public service commission had exercised its discretion or taken any steps to terminate the franchise contract by authorizing an increase of rates, the superior court has jurisdiction of an action to recover the excess charges; and this section, authorizing the public service commission, upon complaint as to the "reasonableness" of any rate or toll, to order an overcharge to be repaid, is not applicable, since the franchise contract in force at the time was violated and the reasonableness of the rate is not a factor: *State ex rel. Home Telephone & Telegraph Co. v. Superior Court*, 110 Wash. 396, 188 Pac. 404.

The superior court has jurisdiction of such an action, although it relates to refund of excess freight charges prior to the passage of this section: *State ex rel. Tacoma Eastern R. Co. v. Public Serv. Com.*, 112 Wash. 629, 192 Pac. 1079.

Validity of statute requiring claims for refund of overcharges by carriers to be submitted to public service commission. 3 A. L. R. 203.

§ 10434. Refunds and Overcharges—Determination by Director of Public Works.

The director of public works shall have power and it shall be his duty, upon complaint in writing being made to him, to determine the amount of overcharge made and refund due in all cases where any public service company, as defined in this chapter, charges an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, or which may thereafter be declared to be the legal rate which should have been applied to the service rendered, and to determine to whom the overcharge should be paid: Provided, that this act shall not apply to controversies arising in relation to contracts in existence prior to the taking effect of this chapter. [L. '21, p. 336, § 1.]

§ 10435. Judgment for Overcharge—Collection.

Upon determining the amount of overcharge due from any such public service company, the director of public works may, if he deem it necessary to insure the prompt payment of the same to him, render judgment against such public service company for the amount of such overcharge. From and after the time that a transcript of said judgment is filed with and recorded and indexed by the county auditor as instruments relating to real and personal property are filed, recorded and indexed, it shall be a lien against all real and personal property of such public service company located in the county in which such transcript is filed, recorded and indexed. Such judgment may be enforced by execution and sale through the sheriff of any county in which is found any real or personal property belonging to such public service company, said execution to be delivered to the sheriff by the director of public works and the execution to be levied and the sale made by the sheriff in the same manner as levies and sales are made on judgments of the superior court. [L. '21, p. 336, § 2.]

See supra, § 10433, judgment may order public service company to pay complainant the amount of the overcharge.

§ 10436. Payment of Refunds Collected.

All refunds collected by the director of public works under this act shall immediately be paid to the person, firm or corporation entitled thereto less a fee of ten per cent on the amount collected, which shall be charged by the director of public works, deducted by him and paid into the public service revolving fund of the state treasury. [L. '21, p. 337, § 3.]

§ 10437. Unclaimed Refunds.

All refunds collected by the director of public works and which at the expiration of two years are unclaimed, or which he is unable to deliver to the person entitled thereto, shall be paid by the director of public works into the public service revolving fund of the state treasury. [L. '21, p. 337, § 4.]

§ 10438. Rules and Regulations.

The director of public works shall have power to make rules and regulations for carrying out the provisions of this act. [L. '21, p. 337, § 5.]

§ 10439. Hearings and Procedure.

Hearings to determine the amount of any refund due under this act shall be held in the same manner, the same procedure followed, and judgments and orders subject to review and appeal in the courts as is provided for hearings, procedure, reviews and appeals in matters before the public service commission of Washington under the provisions of this chapter. [L. '21, p. 337, § 6.]

§ 10441. [8626-92.] Valuation of Property—Procedure.

The commission shall ascertain, as early as practicable, the cost of construction and equipment, the amount expended in permanent improvements, and proportionate amount of such permanent improvements charged in construction and to operating expenses respectively, the present as compared with the original cost of construction, and the cost of reproducing in its present condition the property of every public service company.

It shall also ascertain the amount and present market value of the capital stock and funded indebtedness of every public service company.

It shall also ascertain in the case of companies engaged in interstate business, the relative value of the use to which such property in this state is actually put in the conduct of interstate business and state business respectively.

It shall also ascertain the total market value of the property of each public service company operating in this state used for the public convenience within the state.

It shall also ascertain the time intervening between the expenditure of money in the cost of construction and time when returns in the shape of dividends were first received by each of these companies.

It shall also ascertain the probable earning capacity of each public service company under the rates now charged by such companies and the sum required to meet fixed charges and operating expenses, and in case of a company doing interstate business it shall also ascertain the probable earning capacity of such company upon intrastate business, and the sum required to meet fixed charges and operating expenses on intrastate business, and the relative proportion of intrastate and interstate business, the relative proportion of the operating expenses connected therewith, the relative proportion of the revenue which should be derived therefrom.

It shall also ascertain the density of traffic and of population tributary to every public service company, and the conditions which will tend to show whether such traffic and population is likely to continue, increase or diminish.

It shall also ascertain the existence of grades, curvatures and other physical conditions affecting the movement of traffic and business of common carriers.

It shall also ascertain whether the expenditures already made by any public service company in procuring its property were such as were justified by the then existing conditions, and such as might reasonably be expected in the immediate future and whether the money expended

by such company has been reasonable for the present needs of the company and for such needs as may reasonably be expected in the immediate future.

The commission is hereby authorized to cause a hearing or hearings to be held at such time or times and place or places as the commission may designate for the purpose of ascertaining the matters and things provided for in this section.

The commission shall, before any hearing is had, notify the company concerned of the time and place of such hearing, by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of such company's property within the state, which shall be a sufficient complaint to authorize the commission to inquire into the matters designated in this section.

All companies affected shall be entitled to be heard and introduce evidence at such hearing. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission.

The commission shall make and render findings of fact in writing covering all matters in this section mentioned concerning which it is directed to inquire into, and shall make findings upon all matters concerning which evidence may have been introduced before it shall tend to show the value of the property used by such company for the public convenience.

Any company affected by the findings, or any of them, believing such findings, or any of them, to be contrary to law or the evidence introduced, or that such findings are unfair, unwarranted or unjust, may institute proceedings in the superior court of the state of Washington in the county in which said hearing has been held, or, if held in more than one county, then in the county in which said hearing was commenced, and have such findings reviewed, and their correctness, reasonableness and lawfulness inquired into and determined. Such review shall be heard by the court without the intervention of a jury and shall be heard upon the evidence and exhibits taken before the commission and certified to by it; and the court before which such hearing is had, in case it finds any such findings so sought to be reviewed unjust, incorrect, unreasonable, unlawful or not supported by the evidence, shall make new and correct findings to take the place of such as may not be sustained, unless such findings are set aside and reversed for error on the part of the commission in rejecting evidence properly proffered in which case it shall remand said hearing to the commission with instructions to receive the evidence so proffered and rejected and make the findings of fact on the evidence so proffered and that already received.

Said public service company or the commission shall have the right to appeal from the decision of the superior court to the supreme court of the state of Washington, as in civil cases. In case the supreme court finds any findings so sought to be reviewed unjust, incorrect, unlawful or unreasonable, or not supported by the evidence, it shall either make and render proper findings or remand the case to the superior court with instructions to make proper findings on the evidence already submitted,

unless the same is reversed for error in rejecting evidence properly proffered in which case the hearing shall be remanded to the commission with instructions to receive the evidence so proffered and make findings on the evidence so proffered and rejected and that already received.

The findings of the commission so filed, or as the same may be corrected by the courts, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding or hearing, excepting with respect to matters of assessment and taxation, in which the state or any officer, department or institution thereof, or any county, municipality, or other body politic and the public service company affected is interested, whether arising under the provisions of this act or otherwise, and such findings when so introduced shall be conclusive evidence of the facts stated in such findings as of the date therein stated under conditions then existing, except as a basis for taxation, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined.

The commission shall hereafter, from time to time, cause further hearings to be had for the purpose of ascertaining the betterments, improvements, additions, and extensions made by any public service company to its property subsequent to the date of any prior hearing, and shall examine into all traffic movement and every matter and thing that would change, modify or affect any finding of fact previously made, and shall at such time make findings of fact supplemental to those theretofore made, showing the amount expended in betterments, improvements, extensions and additions since such prior findings and the cost of reproducing the same, the value of the property used by such company at the time of such subsequent hearing, the relative value of the use to which such property is put in the performance of intrastate and interstate business, respectively, and the value of the property of such company in the state used for the public convenience of intrastate business. Such hearing shall be had upon the same notice, the examination conducted in the same manner, and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing and findings: Provided, that such findings made at such supplemental hearing shall be considered in connection with and as a part of the original findings except in so far as such supplemental findings shall change or modify the findings made at the original hearing. [L. '11, p. 601, § 92; L. '13, p. 662, § 1.]

See notes to § 10340.

Cited in 82 Wash. 27; 84 Wash. 517, 530, 536; 93 Wash. 92; 98 Wash. 231; 107 Wash. 23.

Under this section, there is such arbitrary and unlawful action on the part of the taxing boards in assessing railroad property, as to warrant an action on the equity side of the court for relief, where the state board of tax commissioners and the state board of equalization refused to consider and hear evidence on the application of a railroad company showing that its operating properties have depre-

ciated in value since the finding made in the previous year by the public service commission, but accepted such previous valuation as conclusive for the assessment year in dispute: *Spokane & Inland Empire R. Co. v. Spokane County*, 82 Wash. 24, 143 Pac. 307.

Under this section, "goodwill" may be considered as an asset in determining the value of a company's lines and property: *Northern Pac. R. Co. v. State*, 84 Wash. 510, 147 Pac. 45, Ann. Cas. 1916E, 1166.

Under this section and section 11161, the railroad commission has power to classify the operating property of railroads and having classified real estate adjoining terminal grounds as operating property, the state tax commission has no authority to reclassify the same as nonoperating property because not used in operating that year, so as to authorize its assessment by the county assessor in like manner as the real estate of individuals: *Northern Pac. R. Co. v. King County*, 93 Wash. 89, 160 Pac. 8.

Where the value of railway property has been fixed by the state railway com-

mission, the state tax commission had no power to fix another valuation for the purposes of taxation, under the act of 1907 (Rem. & Bal. Code, § 9141): *State ex rel. Oregon R. & Nav. Co. v. Clausen*, 63 Wash. 535, 116 Pac. 7.

The physical valuation of the old operating properties as fixed by the public service commission is conclusive on the state tax commission in its annual assessments for taxation, subject to revision by the courts: *Oregon-Washington R. & Nav. Co. v. Thurston County*, 98 Wash. 218, 167 Pac. 930.

What is an excessive valuation: *Id.*

§ 10442. [8626-93.] Summary Proceedings.

Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this act, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county or in the superior court of any county in which such company may do business, in the name of the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect as appeals from judgments of the superior court in actions to review orders of the commission. All provisions of this act relating to the time of appeal, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court under the provisions of this section. [L. '11, p. 605, § 93.]

§ 10443. [8626-94.] Penalties for Violation of Act or Orders.

Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this act, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this act shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [L. '11, p. 606, § 94.]

The penalty for failure to obey an order to construct a depot within a specified time attaches at the expiration of the period: *State ex rel. Railroad Com. v. Great Northern R. Co.*, 68 Wash. 257, 123 Pac. 8.

In a proceeding to recover a penalty for failing to comply with an order of the railroad commission for the erection of a depot, complaint cannot be made of the order that it was indefinite as to the size and location of the building, where the company accepted and acted upon the order except as to the time for its erection, and it was definite as to such time: *State ex rel. Railroad Com. v. Oregon R. & Nav. Co.*, 68 Wash. 160, 123 Pac. 3.

Under *Rem. & Bal. Code*, § 8631, prescribing a penalty if a railroad company "refuse or neglect" to obey any order of the railroad commission, the penalty is imposed for neglect, as well as refusal, to obey an order to construct a depot within a specified time, and the penalty cannot be restricted to cases of willful or contumacious refusal to obey an order; the word "neglect" meaning omission or forbearance, irrespective of carelessness or imprudence: *State ex rel. Railroad Com. v. Great Northern R. Co.*, 68 Wash. 257, 123 Pac. 8.

In a prosecution to recover a penalty for failing to obey an order of the railroad commission to construct a depot within a specified time, which became final and conclusive because not appealed from, it is no defense that the defendant's system of work entailed such delay that the time fixed for performance was unreasonably short, where these facts were well known to the company at the

time the order was made and the objection could have been raised on direct appeal from the order: *State ex rel. Railroad Com. v. Great Northern R. Co.*, 68 Wash. 257, 123 Pac. 8.

In such a case, it is no defense that unprecedented floods delayed the performance, where such floods occurred after the expiration of the time prescribed by the order for performance: *State ex rel. Railroad Com. v. Great Northern R. Co.*, 68 Wash. 257, 123 Pac. 8.

Proceedings to Compel Operation: Individuals, living along the line of a street railway, cannot maintain an action to prevent the company from abandoning the route merely because they, "and many other residents similarly situated," are dependent on the line for railway service, in the absence of any allegation as to the number of persons affected who are too remote to use a new parallel route, or the manner in which the public convenience will be affected: *Day v. Tacoma R. & Power Co.*, 80 Wash. 161, 141 Pac. 347, L. R. A. 1915B, 547.

Injunction does not lie to prevent a street railway company from abandoning that part of its road lying between two stations served by a competing road lying closely parallel, merely because the abandonment necessarily results in depriving all persons to whom both roads are accessible of competitive service; since the whole theory of the public service law is opposed to the idea that the public will be better served with two closely parallel lines of road where one road will amply suffice: *Day v. Tacoma R. & Power Co.*, 80 Wash. 161, 141 Pac. 347, L. R. A. 1915B, 547.

§ 10444. [8626-95.] Officers and Employees Subject to Penalty.

Every officer, agent or employee of any public service company, who shall violate or fail to comply with, or who procures, aids or abets any

violation by any public service company of any provision of this act, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [L. '11, p. 606, § 95.]

§ 10445. [8626-96.] Corporations Violating Act or Orders—Penalty.

Every corporation, other than a public service company, which shall violate any provision of this act, or which shall fail to obey, observe or comply with any order of the commission under authority of this act, so long as the same shall be and remain in force, shall be subject to a penalty of not to exceed the sum of one thousand dollars (\$1,000) for each and every offense. Every such violation shall be a separate and distinct offense, and the penalty shall be recovered in an action as provided in section 10447. [L. '11, p. 607, § 96.]

§ 10446. [8626-97.] Persons Violating Act—Penalty.

Every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, shall violate any provision of this act, or fail to observe, obey or comply with any order made by the commission under this act, so long as the same shall be or remain in force, or who shall procure, aid or abet any such corporation in its violation of this act, or in its failure to obey, observe or comply with any such order, shall be guilty of a gross misdemeanor. [L. '11, p. 607, § 97.]

§ 10447. [8626-98.] Suit for Penalties.

Actions to recover penalties under this act shall be brought in the name of the state of Washington in the superior court of Thurston county, or in the superior court of any county in or through which such public service company may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this act shall be paid into the treasury of the state. [L. '11, p. 607, § 98.]

§ 10448. [8626-99.] Orders and Rules Conclusive.

In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this act, or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this act provided. [L. '11, p. 608, § 99.]

See notes to § 10428.

Cited in 85 Wash. 37, 39; 110 Wash. 195.

In view of this section, a public service corporation cannot maintain an action to set aside an order, made without no-

tice, annulling a previous judgment of the commission fixing rates: Willapa Power Co. v. Public Serv. Com., 110 Wash. 193, 188 Pac. 464.

§ 10449. [8626-100.] Findings of Prima Facie Correct.

Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful. [L. '11, p. 608, § 100.]

See notes to § 10340.

§ 10450. [8626-101.] Commission shall Enforce Laws.

It shall be the duty of the commission to enforce the provisions of this act and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. [L. '11, p. 608, § 101.]

See notes to § 10340.

§ 10451. [8626-102.] Companies Liable for Damages.

In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this act or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was willful, it may, in its discretion fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation. [L. '11, p. 608, § 102.]

§ 10452. [8626-103.] Commission to Furnish Copy of Rates, etc.—Fees.

Upon the application of any person the commission shall furnish certified copies of any classification, rate, rule, regulation or order established by such commission, and the printed copies published by authority of the commission, or any certified copy of any such classification, rate, rule, regulation or order, with seal affixed, shall be admissible in evidence in any action or proceeding, and shall be sufficient to establish the fact that the charge, rate, rule, order or classification therein contained is the official act of the commission. When copies of any classification, rate, rule, regulation or order not contained in the printed reports, or copies of papers, accounts or records of public service companies filed with the commission shall be demanded from the commission for proper use, the commission shall charge a reasonable compensation therefor. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any such person or corporation. [L. '11, p. 609, § 103.]

§ 10453. [8626-104.] Effect of Act—Release of Damages.

This act shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture

which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to the recovery of any other: Provided, that no contract, receipt, rule or regulation shall exempt any corporation engaged in transporting livestock by railway from liability of a common carrier, or carrier of livestock, which would exist had no contract, receipt, rule or regulation been made or entered into. [L. '11, p. 609, § 104.]

Cited in 97 Wash. 600, 604, 606.

An exemption by contract from liability for negligence by a railroad transporting livestock into this state, contrary to the provisions of this section, is void as against public policy, although valid under the laws of the state where the contract was made; and comity does not require its enforcement in this state: *Carstens Packing Co. v. Southern Pac. Co.*, 58 Wash. 239, 108 Pac. 613, 27 L. R. A. (N. S.) 975.

This section is not void as against public policy when freely and fairly made in

consideration of the rate given, a higher valuation being available at a higher rate: *Carstens Packing Co. v. Northern Pac. R. Co.*, 64 Wash. 256, 116 Pac. 625.

A stipulation in a contract for the shipment of livestock, rendering claims for loss, injury or damage invalid unless presented in writing within thirty days after the same shall have occurred, is not a contract exempting the company from liability, within this section: *Henry v. Chicago, Milwaukee & Puget Sound R. Co.*, 84 Wash. 633, 147 Pac. 425.

§ 10454. [8626-105.] Effect of Act upon Municipal Utilities.

Nothing in this act shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the safety, adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any street railroad, telephone line, gas plant, electrical plant or water system owned and operated by any city or town, but all other provisions enumerated herein shall apply to public utilities owned by any city or town. [L. '11, p. 610, § 105.]

Applicability of public utility acts to municipal corporations owning or

operating a public utility. 10 A. L. R. 1432.

§ 10455. [8626-107.] Public Service Commission to Act as Railroad Commission.

Whenever the terms "Railroad Commission of Washington," "Railroad Commissioner," or "Railroad Commission" occur in any law, contract or document, or whenever in any law, contract or document, reference is made to such commission or commissioners, such terms or reference shall be deemed to refer to and include the public service commission as established by this act, so far as such law, contract or document pertains to matters within the jurisdiction of the said public service commission. [L. '11, p. 610, § 107.]

See notes to § 10340.

§ 10456. [8626-108.] Constitutionality.

If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. [L. '11, p. 611, § 108.]

§ 10457. [8626-110.] Transfer of Records.

The railroad commission of Washington shall transfer and deliver to the public service commission hereby created all books, maps, papers and records, furniture, equipment, instruments and supplies in its possession at the date of the taking effect of this act. [L. '11, p. 611, § 110.]

§ 10458. [8626-111.] Pending Actions and Proceedings.

This act shall not affect pending actions or proceedings, civil or criminal, brought by or against the railroad commission of Washington, or by any other person or corporation, under the provision of chapter 81 of the Laws of 1905, or the acts amendatory thereof or supplemental thereto, but the same may be prosecuted or defended in the name of the railroad commission of Washington, or otherwise, with the same effect as though this act had not been passed. Any investigation, examination or proceeding undertaken, commenced or instituted by the railroad commission of Washington prior to the taking effect of this act may be conducted and continued to a final determination by the public service commission hereby created, in the same manner, under the same terms and conditions, and with like effect as though the railroad commission of Washington had not been abolished.

No cause of action arising under the provisions of chapter 81 of the Laws of 1905, or the acts amendatory thereof or supplementary thereto, or dependent thereon, shall abate by reason of the passage of this act, whether a suit or action has been instituted thereon at the time of the taking effect of this act or not, but actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as though said chapter (and the acts amendatory thereof or supplemental thereto) had not been repealed.

All findings, orders and rules made, issued or promulgated by the railroad commission of Washington under the provisions of chapter 81 of the Laws of 1905, or the acts amendatory thereof or supplemental thereto, shall continue in force and have the same effect as though this act had not been passed, and the public service commission hereby created is empowered to enforce said findings, orders and rules in the same manner and under the same conditions as though said findings, orders and rules had been made, issued or promulgated by the public service commission hereby created. [L. '11, p. 611, § 111.]

For the act referred to, see Rem. & Bal. Code, § 8627 et seq.

See notes to § 10433.

Cited in 97 Wash. 600, 604, 606.

§ 10459. [8626-112.] Construction of Act—Terms of Commissioners.

This act, in so far as it embraces the same subject matter, shall be construed as a continuation of chapter 81 of the Laws of 1905, and the acts amendatory thereof and supplemental thereto, and the members of the railroad commission of Washington created by said act of 1905 shall during the remainder of their terms of office respectively constitute the public service commission created by this act. At the expiration of the

term of each commissioner a commissioner shall be appointed under the provisions of this act. [L. '11, p. 612, § 112.]

Cited in 101 Wash. 609.

CHAPTER II.

RIGHT TO CONSTRUCT AND OPERATE RAILWAY LINES.

§ 10460. [8662.] Route of Extension, or Branch Road—How to be Designated.

Any railroad corporation chartered by or organized under the laws of the state, or of any state or territory, or under the laws of the United States, and authorized to do business in this state, may extend its railroads from any point named in its charter or articles of incorporation, or may build branch roads either from any point on its line of road, or from any point on the line of any other railroad connecting or to be connected with its road, the use of which other road between such points and the connection with its own road such corporation shall have secured, by lease or agreement, for a term of not less than ten years from its date. Before making any such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings designate the route of such proposed extension or branch by indicating the place from and to which said railroad is to be constructed, and the estimated length of such railroad, and the name of each county in this state through or into which it is constructed, or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall indorse thereon the date of the filing thereof, and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch, and receive aid thereto which it would have had if it had been authorized in its charter or articles of incorporation. [L. '90, p. 526, § 1; 1 H. C., § 1535.]

See supra, §§ 8966, 8971, control by cities.

See infra, § 10466, designation of route.

Cited in 5 Wash. 515; 46 Wash. 490—493; 68 Wash. 399.

This section only applies to such roads as shall, by resolution of its directors or trustees be entered in the records of its proceeding, designate the route of such proposed branch and file a copy of such record certified by the president and secretary, in the office of the secretary of state: *Biles v. Tacoma etc. R. Co.*, 5 Wash. 509, 32 Pac. 211.

Where a domestic railway corporation

adopted its line of location at a meeting of the directors held in another state, the subsequent bringing of condemnation proceedings in this state for a right of way along the same line amounts to an adoption of the corporate action taken outside of the state: *State ex rel. Biddle v. Superior Court*, 44 Wash. 108, 87 Pac. 40.

This section is inapplicable to main line routes: *State ex rel. Northern Pac. R. Co. v. Superior Court*, 68 Wash. 397, 123 Pac. 529.

§ 10461. [8663.] May Own and Guarantee Bonds or Stocks of Irrigating Companies.

It shall be lawful for any corporation, whether such corporation is organized under the laws of the territory or state of Washington, the laws of any other state or territory, or the laws of the United States,

owning, leasing, or operating any line or lines of railway within the state of Washington, or which may own, lease, or operate in the future any such line or lines of railway within this state, to take, acquire, own, negotiate, sell, and guarantee bonds and stocks of companies or corporations which are or may hereafter be organized for the purpose of irrigating and reclaiming lands within this state. [L. '90, p. 529, § 1; 1 H. C., § 1543.]

§ 10462. [8664.] May Build, Own and Operate Ditches and Canals.

It shall be lawful for any such corporation to build, own, and operate irrigating ditches and canals in this state for the purpose of irrigating and reclaiming arid lands contiguous to or tributary to such line or lines of railway. [L. '90, p. 529, § 2; 1 H. C., § 1544.]

See *supra*, § 7417 et seq., irrigation ditches.

See *infra*, § 11576, appropriation of lands.

§ 10463. [8665.] May Buy Stock, Aid, or Build Other Road—Consolidation of Roads—Articles.

Any railroad company now or hereafter incorporated pursuant to the laws of this state or of the United States or of any state or territory of the United States, may at any time by means of subscription to the capital stock of any other railroad company, or by the purchase of its stock or bonds, or by guaranteeing its bonds, or otherwise, aid such company in the construction of its railroad within or without this state; and any such company owning or operating a railroad within or without this state, may extend the same into this or any other state or territory, and may build, buy, or lease the whole or any part of any other railroad, together with the franchises, powers and immunities and all other property and appurtenances appertaining thereto, whether located within or without this state; or may consolidate with any railroad or railroads in such other state or territory, or with any other railroad in this state, and may operate the same, and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; and any such railroad company may sell or lease the whole or any part of its railroad and branches, within or without this state, constructed or to be constructed, together with all property, rights, privileges, and franchises appertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States or of this state, or of any other state or territory of the United States; and any railroad company incorporated or existing under the laws of the United States, or of any state or territory of the United States, may extend, construct, maintain and operate its railroad, or any portion or branch thereof, into and through this state, and may build branches from any point on such extension to any place or places within this state, and the railroad company of any other state or territory of the United States which shall so purchase or lease a railroad, or any part thereof in this state, or consolidate with any such railroad in this state, or shall extend or construct its road, or any portion or branch thereof in this state, shall possess and may exercise and enjoy as to the location,

control, management and operation of the said road, and as to the location, construction and operation of any extension or branch thereof, all the rights, powers, privileges and franchises, possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain. Such purchase, sale, consolidation or lease may be made, or such aid furnished, upon such terms or conditions as may be agreed upon by the directors and trustees of the respective companies; but the same shall be approved or ratified by persons holding or representing seventy-five per cent of the capital stock of the company so selling or disposing of its stock or bonds, or selling, leasing, or otherwise disposing of its railroad property and appurtenances pertaining thereto, at any annual stockholders' meeting or at a special meeting of the stockholders called for that purpose, or by the approval in writing of seventy-five per cent of the stockholders of such company. Articles stating the name selected for such consolidated corporation and the terms of such consolidation shall be approved by each corporation by the vote of the stockholders holding seventy-five per cent of the stock, in person or by proxy, at a regular meeting thereof or a special meeting called for that purpose in the manner provided by the by-laws of the respective consolidating corporations, or by the consent in writing of such seventy-five per cent of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or consent, duly certified by the respective presidents and secretaries, with the corporate seals of such corporations affixed thereto, shall be filed for record in the office of the secretary of state, and a copy thereof be furnished to the public service commission; and thereupon such consolidating corporations shall be and become one corporation, by the name so selected, which, within this state, shall possess all the powers, franchises, and immunities, including the right of further consolidation with other corporations, and be subject to all the liabilities and restrictions now or hereafter imposed by law: Provided, that no railroad or transportation corporation shall consolidate its stock, property, or franchises with any other railroad or transportation corporation owning a competing line, or purchase either directly or indirectly, any stock or interest in a railroad or transportation corporation owning or operating a competing line: And, provided further, that nothing in the foregoing provisions shall be held or construed as curtailing the right of this state, or of the counties through which any such road or roads may be located to levy and collect taxes upon the same, and upon the rolling stock thereof, in conformity with the provisions of the laws of this state upon that subject, and all roads or branches thereof in this state so consolidated with, purchased or leased, or aided, or extended into this state, shall be subject to taxation and to regulation and control of its operation by the laws of this state in all respects the same as if constructed by corporations organized under the laws of this state; and any corporation of another state or territory or of the United States, being the purchaser or lessee of a railroad within this state or extending its railroad or any portion thereof into or through this state, shall establish and maintain an office or offices in this state, at some point or points on its line, at which legal process and notice may be served as upon railroad corporations of this state: Provided,

further, that before any railroad corporation organized under the laws of any other state or territory, or of the United States, shall be permitted to avail itself of the benefits of this act with respect to any railroad constructed, or to be constructed within this state, such corporation shall file with the secretary of state, a true copy of its charter or articles of incorporation, and otherwise comply with the laws of this state respecting foreign corporations doing business within the state: Provided, that any such consolidation shall be approved by the public service commission: Provided, further, that in no case, shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies so consolidated, at the par value thereof. [L. '15, p. 367, § 1. Cf. L. '09, p. 698, § 1; L. '90, p. 526, § 2; 1 H. C., § 1536.]

"This act" refers to this and the next section.

See *supra*, § 933, appropriation of right of way through passes.

See *supra*, §§ 8088—8098, rights of way over state lands.

See *infra*, §§ 10538, 10539, appropriation of right of way.

Compare L. '75, p. 108, § 1.

See Const., Art. XII, § 16, prohibition against consolidation, etc.

Cited in 80 Wash. 170.

A private citizen cannot raise the question whether a railroad corporation in owning all the stock of other companies violated this section or Constitution, Article XII, section 16, prohibiting the

consolidation of its stock, property or franchises with any other railroad owning a competing line: *Day v. Tacoma R. & Power Co.*, 80 Wash. 161, 141 Pac. 347, L. R. A 1915B, 547.

§ 10464. [8666.] Former Actions Legalized.

Any sale or purchase of, and any consolidation by sale, or otherwise, or any lease, or agreement to sell, consolidate with or lease, the whole or any part of any railroad or the branch lines of any company, whether organized or located within or without this state, with the franchises appertaining thereto, to, from or with any railroad company organized under the laws of the United States or of this state or any other state or territory, or any consolidation between such companies, heretofore executed by the proper officers of the respective companies, parties to such sale, lease or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution: Provided, that the provisions of this section shall not apply when the railroads or transportation corporations involved are competing lines. [L. '09, p. 701, § 2.]

"This act": See the preceding section.

§ 10465. [8667.] Spur Tracks—Limit as to Eminent Domain.

Any railroad corporation organized under the laws of this state or of any other state, and authorized to do business in this state and owning or operating a railway in this state, may construct, maintain and operate public spur tracks, from its railroad or any branch thereof, to and upon the grounds of any mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber-yard, coal dock or other industry or enterprise, with all sidetracks, storage tracks, wyes, turnouts, and connections necessary or convenient to the use of the same; and such company may acquire by purchase or condemnation, in the manner pro-

vided by the laws of this state for the acquisition of real estate for railway purposes, all necessary rights of way for such spur tracks, side-tracks, storage tracks, wyes, turnouts and connections; said spur when constructed to be a public spur for the use of all industries located or thereafter located thereon: Provided, that the right to acquire by condemnation herein granted shall not be exercised over unimproved lands for a greater distance than five miles, or over improved lands for a greater distance than one mile, or over lands within the limits of a municipal corporation for a greater distance than one-fourth of a mile: Provided further, that this section shall not be construed as limiting the rights granted under the operation of section 10460, supra, relating to the construction of branch lines. [L. '07, p. 516, § 1.]

Cited in 68 Wash. 399.

Right of railroad to condemn land for spur track to private establishment. 7 Ann. Cas. 835; 13 Ann. Cas. 1012; Ann. Cas. 1912D, 234.

Right of municipality to condemn land to connect municipal works with railroad. Ann. Cas. 1912B, 382.

§ 10466. [8668.] Extension of Railroad into State—Preliminaries Required.

Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed, or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall indorse thereon the date of filing thereof, and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch, and receive such aid thereto, as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this state. [L. '90, p. 527, § 3; 1 H. C., § 1537.]

Cited in 46 Wash. 490; 68 Wash. 399.

§ 10467. [8669.] Control of Railroads is in State.

All such railroad corporations, consolidated companies, and their branches, including their stock, property, and franchises, within the jurisdiction of this state, shall be subject to and controlled by the Constitution and laws of this state. [L. '90, p. 528, § 4; 1 H. C., § 1538.]

Cited in 75 Wash. 277.

§ 10468. [8670.] May Build Bridges Over Navigable Streams.

Any railroad corporation heretofore duly incorporated and organized under the laws of this state or of the territory of Washington, or which may hereafter be duly incorporated and organized under the laws of this state, or heretofore or hereafter incorporated and organized under the laws of any other state or territory of the United States, and authorized to do business in this state, and to construct and operate railroads therein, shall have and hereby is given the right to construct bridges across the navigable streams within this state over which the projected line or lines of railway of said railroad corporations will run: Provided, that said bridges are constructed in good faith for the purpose of being made a part of the constructed line of said railroad: And provided, that they shall be constructed in the course of the construction of said railroad or thereafter for the more convenient operation thereof: And provided, further, that such bridges shall be so constructed as not to interfere with, impede, or obstruct the navigation of such streams. [L. '90, p. 53, § 1; 1 H. C., § 1539.]

See *infra*, § 10536.

Cited in 54 Wash. 536; 61 Wash. 197.

The consent of the secretary of war to construct a bridge over a navigable stream is not a condition precedent to condemnation of tide lands to be reached by way of the bridge, inasmuch as the state has given its consent by this sec-

tion and § 10536, providing that bridges across navigable streams shall be so constructed as not to interfere with or obstruct navigation: State ex rel. Hulme v. Grays Harbor & Puget Sound R. Co., 54 Wash. 530, 103 Pac. 809.

§ 10469. [8671.] Bridges and Trestles Across State Waterways.

Any corporation, copartnership, person or trustee heretofore or hereafter by any state or municipal law or ordinance authorized to construct and operate railroads, interurban railroads or street railroads as common carriers within this state, shall have, and hereby is given, the right to construct bridges or trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington over which the projected line or lines of railroad will run: Provided, such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such railroad, and may also have included therewith the purpose of providing a roadway for the accommodation of vehicles and foot-passengers. [L. '09, p. 605, § 1.]

For first portion of this section, conferring the same power upon cities, and § 2 of the act relating to the approval of plans by the state land commission and secretary of war, see §§ 9329, 9330, *supra*.

CHAPTER III.

RAILWAY EQUIPMENT REGULATIONS.

§ 10470. [8672.] Equipment of Flat Cars—Stakes—Weight Deducted.

The stakes, standards, supports, stays, railings and other equipments, appliances and contrivances necessary to effectually and suitably equip and supply every and all flat cars, and cars belonging to any and every railroad company, or person engaged in the business of carrying for hire in this state shall constitute and be held considered part and parcel of

said cars, and the weight of same shall be added to the weight of the cars, and shall be deducted from the weight of the cargo, commodity, or product shipped on any and all such flat car or cars so that the freight charges shall be charged by the carrier only on the cargo, commodity or product carried. [L. '05, p. 238, § 1; L. '07, p. 506, § 1.]

§ 10471. [8673.] Penalties for Violation.

Any railroad company or other common carrier, and any officer, or agent or employee of any railroad company, or other common carrier, and any and every person violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, for each unlawful act, and the knowledge and acts of agents or persons employed by corporations in and about the matters covered by or referred to in the provisions of this act, shall be held to be the knowledge and acts of such corporations as well as of such agents and employees. [L. '05, p. 239, § 3.]

"This act" refers to §§ 10470—10472.

§ 10472. [8674.] Punitive Damages for Excessive Rates.

If any freight charges are collected contrary to any of the provisions of this act by any common carrier operating in this state, they may be recovered from such common carrier in a suit at law by the person, firm or corporation from whom they were so collected, together with a sum equal to treble the amount thereof as punitive damages. [L. '05, p. 239, § 4.]

"This act": See note to last section.

§ 10473. [8675.] Shipper may Furnish, When.

Whenever any railroad company or any person engaged in the business of carrying for hire in this state shall set in or furnish any person or persons any flat car or cars that is, or are not, provided with stakes, standards, supports, stays, railings and other equipments, appliances and contrivances necessary to effectually and suitably equip and supply every and all such flat car or cars for the purpose of loading and transporting goods, commodities or products, and it shall be necessary and requisite that the shipper or loader of any goods, commodities or products shall furnish any stakes, standards, supports, stays, railings and other equipments, appliances and contrivances necessary to effectually and suitably equip and supply such flat car or cars for the purpose of transporting any goods, commodities or products, the carrier or railroad company, or person engaged in the business of carrying for hire, shall pay to the shipper or loader of any such flat car or cars the cost and expenses of placing on any and all of such flat car or cars, stakes, standards, supports, stays, railings or other equipments, appliances, and contrivances necessary to effectually and suitably equip or supply every and all such fiat car or cars. [L. '07, p. 506, § 2.]

§ 10474. [8676.] Scales at Junctions.

All railroad companies operating as common carriers within the limits of this state, shall hereafter be required to provide scales, and weigh at junction or at some common point within this state all cars loaded with lumber, shingles or other forest products for shipment. [L. '05, p. 240, § 1.]

Cited in 43 Wash. 662.

Duty of railroad to install stock scales at station. 10 A. L. R. 1339.

§ 10475. [8677.] Charges—How Based.

All charges for freight on said commodities, except where error is apparent, shall be based on the weights determined by the weighing stations within the limits of this state, and all bills of lading of railroad companies operating within the limits of this state shall specify these provisions: Provided, this act shall not apply to switching charges or to the handling of logs where the charge is by the car or by the thousand feet. [L. '05, p. 240, § 2.]

"This act" embraces §§ 10474—10479.

Cited in 43 Wash. 662.

This section arbitrarily fixing the weights is unconstitutional, as unreasonable, and requiring the carriage of part of the lumber without reward; notwithstanding the difference between that and the actual weight is small as compared with the weight of the cargo; and six hundred pounds per car to be carried free is a substantial amount and a confiscation of property without due process of law: State ex rel. Washington Mill Co. v. Great Northern R. Co., 43 Wash. 658, 86 Pac. 1056, 117 Am. St. Rep. 1084, 6 L. R. A. (N. S.) 908.

The fact that section 10474 provides that the shipper shall furnish such standards, and that the weight of the equipment shall be added to the weight of the car, "so that the freight shall be charged by the carriers only on the cargo carried," does not obviate the defects in this section, requiring one thousand pounds to be deducted from the "net weight of the lumber carried," which is an unreasonable regulation and in violation of Article XIV, section 1, of the federal Constitution: State ex rel. Washington Mill Co. v. Great Northern R. Co., 43 Wash. 658, 86 Pac. 1056, 117 Am. St. Rep. 1084, 6 L. R. A. (N. S.) 908.

§ 10476. [8678.] Statement of Weight—Shipper's Count.

Any railroad company's employee acting as weigher shall upon request of any shipper give him a statement showing gross and net weight of any shipment by him. Sworn count and weight of shipper shall be presumptive evidence of true weight where error in railroad weights is apparent. [L. '05, p. 241, § 3.]

See supra, § 8373, weighing lumber and shingles.

See supra, § 8377, what weights to be accepted.

See supra, § 8374, lumber freights based on weight.

§ 10477. [8679.] Cars Weighed Separately.

All cars shall be weighed on the scales separately, and not attached to other cars, and at a standstill. [L. '05, p. 241, § 4.]

§ 10478. [8680.] Penalty for Violation.

In case of violation of the provisions of this act by any railroad company, it shall pay a penalty of twenty dollars (\$20) for every car it shall neglect to weigh and bill within the state as above provided, to be

recovered from such company in action where there is any agent of such railroad company who may be served with process, and the penalties recovered under this act shall be paid into the county treasury in such county where action is taken. [L. '05, p. 241, § 5.]

"This act" embraces §§ 10474—10479.

§ 10479. [8681.] May Contract Regarding Weights, When.

Nothing contained in this bill shall interfere with the right of the shipper and carrier to enter into a private contract regarding weights when it is impracticable to weigh. [L. '05, p. 241, § 6.]

"This bill": §§ 10474—10479.

§ 10480. [8682.] Guards for Frogs, Switches, etc.—Qualifications of Flagmen.

Any person or persons, railroad companies or corporations, owning or operating a railroad or railroads in this state, shall be and are hereby required on or before the first day of October, 1899, to so adjust, fill, block and securely guard the frogs, switches and guard rails on their roads as to protect and prevent the feet of employees and other persons from being caught therein. That any railroad operating within this state, shall not employ or use as flagman any person or persons who cannot read, write and speak the English language. [L. '99, p. 49, § 1; L. '07, p. 265, § 1.]

See supra, § 10404, guards for frogs and switches.

Cited in 66 Wash. 88.

This section applies to railroads organized after the act went into effect; and to a logging road of a mill company

used in getting out logs to the mill, and not engaged in public service as a common carrier: *Alberg v. Campbell Lumber Co.*, 66 Wash. 84, 119 Pac. 6.

§ 10481. [8683.] Damages Resulting from Noncompliance.

Any person or persons, railroad companies or corporations owning or operating a railroad or railroads in this state, shall be liable for any damage received from a failure to comply with the provisions of this act; such damages to be recovered by the parties entitled to recover as provided in sections 182, 183 and 184 of this code. [L. '99, p. 49, § 2.]

Section "183" refers to Remington & Ballinger's Code, superseded by § 183 of this code.

"This act" embraces §§ 10480—10482.

Cited in 66 Wash. 88, 89.

This section does not limit the right of action to injuries from which death results, the object being only to extend

the liability to actions for wrongful death: *Alberg v. Campbell Lumber Co.*, 66 Wash. 84, 119 Pac. 6.

§ 10482. [8684.] Penalty.

Any person or persons, railroad companies or corporations, owning or operating any railroad in this state, failing to comply with the provisions of this act within the time limited, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five hundred dollars nor more than two thousand dollars. [L. '99, p. 49, § 3.]

"This act" embraces §§ 10480—10482.

§ 10483. [8685.] Caboose Cars—Size and Equipment.

It shall be unlawful for any person, corporation or company operating any railroad or railway in this state to require or permit the use of any caboose cars, unless said caboose cars shall be at least twenty-four feet in length, exclusive of platforms, and shall be provided with a door in each end thereof, and with suitable water-closets, cupolas, platforms, guard-rails, grab-irons and steps for the safety of persons in alighting or getting on said caboose cars and said caboose cars shall be equipped with at least two four wheel trucks and an operative hand-brake on each end: Provided, however, that this act shall not apply to logging railways upon which passengers are not regularly carried for hire. [L. '09, p. 51, § 1.]

"This act" refers to §§ 10483—10485.

§ 10484. [8686.] Penalty.

Any person, corporation or company operating any railroad or railway in this state, violating any of the provisions of section 10483, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars (\$500), nor more than one thousand dollars (\$1,000), for each offense. [L. '09, p. 51, § 2.]

§ 10485. [8687.] In Effect, When.

This act shall be in force and take effect from and after the first day of January, 1910: Provided, that caboose cars not conforming to the above requirements may be operated on branch lines not exceeding one hundred miles in length, and on work trains, until January 1, 1911. [L. '09, p. 52, § 3.]

"This act": See two preceding sections.

§ 10486. [8687-1.] Full Train Crews.

It shall be unlawful for any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway, in the state of Washington, and engaged, as a common carrier, in the transportation of freight or passengers, to operate over its road or any part thereof, or suffer or permit to be run over its road outside of the yard limits, any passenger, mail or express train consisting of four or more cars with less than a full passenger crew consisting of five men, to wit: one engineer, one fireman, one conductor, one brakeman and one flagman (said flagman to have had at least one year's experience in train service) and none of the said crew shall be required or permitted to perform the duties of train baggagemen or express messenger while on the road. [L. '11, p. 650, § 1.]

§ 10487. [8687-2.] Six Men Crew—Exceptions.

It shall be unlawful for any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway, in the state of Washington, and engaged, as a common carrier, in the transportation of freight or passengers, to operate over its road or any part thereof, or suffer or permit to be run over its road outside

of the yard limits, any freight train consisting of twenty-five or more cars exclusive of engine and caboose, with less than a full train crew consisting of six men, to wit: one engineer, one fireman, one conductor, two brakemen and one flagman (said flagman to have had at least one year's experience in train service): Provided, however, that light engine, without cars, shall have the following crew, to wit: one engineer, one fireman and one conductor. [L. '11, p. 651, § 2.]

§ 10488. [8687-3.] Separate Offenses.

Each train or engine run in violation of section 10486 or 10487 shall constitute a separate offense: Provided, that nothing in this act shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each twenty-four hours. [L. '11, p. 651, § 3.]

§ 10489. [8687-4.] Penalty—Fine.

Any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway in the state of Washington, and engaged, as a common carrier, in the transportation of freight or passengers, who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense. [L. '11, p. 651, § 4.]

§ 10490. [8687-5.] Duty of Commission.

It shall be the duty of the railroad commission to enforce this act. [L. '11, p. 652, § 5.]

CHAPTER IV.

TRANSPORTATION REGULATIONS.

§ 10491. [8688.] Duties of Transportation Companies.

All transportation companies doing business wholly or in part within this state shall, upon receipt of any article of freight, promptly forward the same to its marked destination by the route directed by the shipper, or if no directions are given by shipper, then to any connecting company whose line en route reaches nearest to the point to which such freight is marked. [L. '90, p. 291, § 1; 1 H. C., § 1540.]

§ 10492. [8689.] Liability of Transportation Companies.

Any transportation company failing to comply with the last preceding section shall be liable for any damages that may be sustained, either to the shipper or consignee, from any cause, upon proof that said damages resulted on account of a failure of the transportation company to comply with said section. [L. '90, p. 291, § 2; 1 H. C., § 1541.]

§ 10493. [8690.] Suits for Damages, Who may Commence and Where.

Suit for damages may be instituted either at the place of shipping or destination, either by the shipper or consignee, and before any court

competent and qualified to hear and determine like causes between individuals resident of the district in which said court is holding. [L. '90, p. 291, § 3; 1 H. C., § 1542.]

§ 10494. [8717.] Cruelty to Stock in Transit.

Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall, during such rest, be properly fed, watered by the owner or person having the custody of them, or in case of his default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space and opportunity to rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by a fine not exceeding one hundred dollars. [L. '93, p. 41, § 4.]

See *supra*, §§ 3124, 3128, unlawful importation.

See *supra*, § 3195, confinement without food, rest or water.

§ 10495. [8718.] Bicycles are Baggage.

Bicycles are hereby declared to be and are deemed baggage, and shall be transported as baggage for passengers by railroad corporations and steamboats, and subject to the same liabilities as other baggage; and no such passenger shall be required to crate, cover, or otherwise protect any such bicycle: Provided, however, that a railroad corporation or steamboat shall not be required to transport under the provisions of this section more than one bicycle for one person. [L. '99, p. 23, § 1.]

CHAPTER V.

SALE OF TICKETS.

§ 10496. [8719.] Ticket Agents to have Certificate of Authority.

It shall be the duty of the owner or owners or person or persons operating any railroad to provide every agent who may be authorized to sell its tickets or other evidence of a right to travel upon any railroad with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of the owner of such railroad or of the corporation operating the same, and by the signature of the manager, secretary or general passenger agent of said railroad. [L. '05, p. 376, § 1.]

An act prohibiting the business of rail- railway transportation except by agents
road ticket brokerage or the selling of licensed by the railroad companies is not

unconstitutional upon any ground: O'Neill,
In re, 41 Wash. 174, 83 Pac. 104, 6 Ann.
Cas. 869, 3 L. R. A. (N. S.) 558.

Power of state to regulate and re-
strict sale of passenger tickets. 96
Am. St. Rep. 828.

§ 10497. [8720.] Agents' Fixed Place of Business—Certificate.

Every agent, person, firm, or corporation engaged in selling, issuing or dealing in railroad passenger transportation in this state, must have a fixed place of business in the town or city wherein such agent, person, firm, or corporation transacts said business, and such agent, person, firm or corporation is hereby required to keep the certificate mentioned in section 10496 of this chapter, posted in a conspicuous place in such place of business. [L. '05, p. 376, § 2.]

§ 10498. [8721.] Sale of Tickets Unlawful, When.

It shall be unlawful for any person, firm, partnership, corporation or association of any kind who is not possessed of and has not posted the certificate of authority as prescribed in sections 10496 and 10497 hereof, to sell or exchange or transfer or to offer for sale or exchange or transfer the whole or any part of any railroad ticket or pass or other evidence of a right to travel upon any railroad, whether the same be situated or operated or owned within or without the limits of this state. [L. '05, p. 377, § 3.]

See supra, § 2648, ticket-scalping prohibited.

Statutory regulation of railroad ticket
brokerage as burden on interstate

commerce. 7 Ann. Cas. 14; Ann.
Cas. 1917A, 997.

§ 10499. [8722.] Sales Without Authority, Prohibited.

It shall be unlawful for any person, firm, partnership, corporation or association of any kind to set up, establish, maintain, conduct or operate within this state any office or other place of business for the sale or exchange or transfer of the whole or any part of any railroad tickets or passes or other evidence of a right to travel upon any railroad within or without the limits of this state unless such person, firm, partnership, corporation or association is possessed of and has posted the certificate of authority as prescribed in sections 10496 and 10497 hereof. [L. '05, p. 377, § 4.]

§ 10500. [8723.] Prima Facie Evidence—What Constitutes.

In all prosecutions under section 10499, proof of the maintenance of any office or other place of business within this state upon or within or in connection with which is attached or displayed any sign bearing the words, "railroad ticket office," or "cut rate office," or "railroad tickets," or "ticket brokers," or any combination of such words or any other words intended or calculated to advertise to the public that the whole or any part of any railroad tickets or passes or other evidences of a right to travel upon any railroad are sold or exchanged or transferred therein without having posted within such office or place of business a certificate of authority as provided in section 10498 hereof, shall be sufficient evidence to establish a prima facie case against the owner, proprietor, employee or person in charge of said office or place of business. [L. '05, p. 377, § 5.]

§ 10501. [8724.] Penalty.

Any person or persons violating any of the provisions of sections 10496, 10497, 10498 or 10499 shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not less than ten nor more than sixty days, or by both such fine and imprisonment. [L. '05, p. 377, § 6.]

§ 10502. [8725.] Redemption of Unused Tickets.

The owner or owners or person or persons operating any railroad in this state or any railroad doing business therein shall redeem, upon presentation by the lawful holder thereof to any of its ticket agents in this state, the whole or any part of any railroad ticket or other evidence of a right to travel upon his, its or their railroad which had been sold, within or without this state, by any such owner or owners or person or persons or any of his, its or their duly authorized agents, if for any reason, such holder has not used the same, upon the following terms: If no part of such ticket has been used, it shall be redeemed at the full amount paid therefor; and where the ticket has been used in part only, the unused portion shall be redeemed at the remainder after deducting from the price paid for the whole ticket, the regular tariff rate between the points between which the portion of said ticket was used: Provided, such ticket or part thereof is so presented for redemption within sixty days after the right to use said ticket has expired according to the terms thereof. [L. '05, p. 378, § 7.]

See *supra*, § 2649, redemption of unused tickets, penalty.

§ 10503. [8726.] Penalty for Failure to Redeem.

If any owner or owners or person or persons operating any railroad mentioned in section 10502 shall fail, neglect, or refuse to redeem, as provided in said section 10502, the whole or any part of any railroad ticket or other evidence of a right to travel upon his, its or their railroad, he, it, or they, shall, upon conviction thereof, be punished by a fine of not less than one hundred nor more than five hundred dollars, and he, it or they shall in an action instituted by the lawful holder of such railroad ticket or other evidence of a right to travel, be liable to such holder in a sum equal to treble the value thereof. [L. '05, p. 378, § 8.]

CHAPTER VI.**UNIFORMS OF EMPLOYEES.****§ 10504. [8727.] Requiring to Purchase from Particular Persons.**

It shall be unlawful for any railroad or other transportation company doing business in the state of Washington, or of any officer, agent or servant of such railroad or other transportation company, to require any conductor, engineer, brakeman, fireman, purser, or other employee, as a condition of his continued employment, or otherwise to require or compel, or attempt to require or compel, any such employees to purchase of any such railroad or other transportation company or of any particular

person, firm or corporation or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or other transportation company to be used by any such employee in the performance of his duties as such; and any such railroad or transportation company or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brakeman, fireman, purser, or other person in its employ, to purchase any uniform or other clothing or apparel as aforesaid, shall be deemed to have required such purchase as a condition of such employee's continued employment. [L. '07, p. 517, § 1.]

§ 10505. [8728.] Penalty.

Any railroad or other transportation company doing business in the state of Washington, or any officer, agent or servant thereof, violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment in the county jail of the county where the misdemeanor is committed, not exceeding six months. [L. '07, p. 517, § 2.]

CHAPTER VII.

FENCES AND CROSSINGS.

§ 10507. [8730.] Track to be Fenced—Crossings—Cattle-guards.

Every person, company or corporation having the control or management of any railroad shall, within six months after the passage of this act, outside of any corporate city or town, and outside the limits of any sidetrack or switch, cause to be constructed and maintained in good repair on each side of said railroad, along the line of said right of way of such person, company or corporation operating the same, a substantial fence, and at every point where any roadway or other public highway shall cross said railroad, a safe and sufficient crossing must be built and maintained, and on each side of such crossing and at each end of such sidetrack or switch, outside of any incorporated city or town, a sufficient cattle-guard: Provided, that any person holding land on both sides of said right of way shall have the right to put in gates for his own use at such places as may be convenient. [L. '03, p. 332, § 1; L. '07, p. 169, § 1.]

Former laws cited in 14 Wash. 156; 17 Wash. 648; 19 Wash. 352, 536; 32 Wash. 453; 57 Wash. 469.

"This act" refers to §§ 10507—10509.

See notes to section 10508.

Cited in 57 Wash. 497, 498; 87 Wash. 310; 89 Wash. 526; 90 Wash. 517; 101 Wash. 460; 108 Wash. 428.

The railroad fence act of 1893, Rem. & Bal. Code, section 8729, requiring railroads, where the same person owns land on both sides of the track, to put in and maintain necessary crossings and gates, was impliedly repealed by this and the next sections: *Huffman v. Oregon R. & Nav. Co.*, 57 Wash. 494, 107 Pac. 362.

This section has no application to the maintenance of sidewalks at railroad crossings for the convenience of pedestrians: *Bullock v. Yakima Valley Transp. Co.*, 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

This section is not supplanted by a right of way agreement whereby a railroad company was to maintain a private crossing and gates, which the owner could leave open at his own risk, and the owner, in leaving the gates open, assumed

only the risk of accidents happening at the crossing: *Snodgrass v. Spokane & Inland Empire R. Co.*, 87 Wash. 308, 151 Pac. 815.

A railroad company is not compelled to fence its depot and side tracks at a station outside of an incorporated city, under this and the next section: *Benn v. Chicago, Milwaukee & St. Paul R. Co.*, 89 Wash. 522, 154 Pac. 1082.

This section being entitled an act compelling railroads to fence their right of way and to protect the owners of stock and declaring the law of negligence, has no application to the maintenance of sidewalks at railroad crossings for the convenience of pedestrians: *Bullock v. Yakima Valley Transp. Co.*, 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

Under this and the next section, an omission to fence only, makes a *prima facie* case of negligence which the company may overcome by evidence: *Benn v. Chicago, Milwaukee & St. Paul R. Co.*, 89 Wash. 522, 154 Pac. 1082.

A railroad company is not liable for damages done by trespassing cattle that

strayed from its unfenced right of way to and upon the lands of an adjoining land owner, under this and the next section: *Hanson v. Northern Pac. R. Co.*, 90 Wash. 516, 156 Pac. 553, L. R. A. 1916E, 446.

Constitutionality of statutes requiring railroad to fence tracks and build cattle-guards. 3 *Ann. Cas.* 182; 31 L. R. A. (N. S.) 861.

Duty of railroad to fence tracks within limits of municipality. 16 A. L. R. 933.

Duty of railroad to fence track as against children. 16 A. L. R. 944.

Measure of care of railroad to keep up fence. 11 *Ann. Cas.* 430; 11 L. R. A. (N. S.) 228.

Duty of railroad to keep cattle-guards in condition: 36 L. R. A. (N. S.) 997; L. R. A. 1915B, 134.

Validity of requirement that railroad shall construct and maintain crossings at new highways without compensation. 8 *Ann. Cas.* 1056; 20 *Ann. Cas.* 1208; 28 L. R. A. (N. S.) 298.

§ 10508. [8731.] Liability for Injury to Stock.

Every such person, company or corporation owning or operating such railroad shall be liable for all damages sustained in the injury or killing of stock in any manner by reason of the failure of such person, company or corporation, to construct and maintain such fence or such crossing or cattle-guard; but when such fences, crossings and guards have been duly made, and shall be kept in good repair, such person, company or corporation shall not be liable for any such damages, unless negligently or unlawfully done. [L. '03, p. 332, § 2; L. '07, p. 169, § 2.]

Cited in 87 Wash. 310; 89 Wash. 526; 90 Wash. 517; 101 Wash. 459.

This and the next section does not embrace injuries not happening through the operation of trains; the title of the act being limited to stock "injured by railway trains": *Thayer v. Snohomish Logging Co.*, 101 Wash. 458, 172 Pac. 552.

Contributory Negligence of Owner—Allowing Animals to Go at Large: See *Remington's Digest*, R. R., § 91; *Timm v. Northern Pac. R. Co.*, 3 W. T. 299, 13 Pac. 415; *Dickey v. Northern Pac. R. Co.*, 19 Wash. 350, 53 Pac. 347; *Snodgrass v. Spokane & Inland Empire R. Co.*, 87 Wash. 308, 151 Pac. 815; *Willett v. Oregon-Washington R. & Nav. Co.*, 94 Wash. 71, 162 Pac. 14.

Actions for Injuries to Animals—Pleading: See *Remington's Digest*, R. R., § 93; *Dickey v. Northern Pac. R. Co.*, 19 Wash.

350, 53 Pac. 347; *Oregon R. & Nav. Co. v. Dacres*, 1 Wash. 195, 23 Pac. 415.

Effect of Stock Laws or Fence Laws as to Care Required: See *Remington's Digest*, R. R., § 87; *Ryan v. Northern Pac. R. Co.*, 19 Wash. 533, 53 Pac. 824; *Taylor v. Spokane Falls & N. R. Co.*, 32 Wash. 450, 73 Pac. 499; *Benn v. Chicago, Milwaukee & St. Paul R. Co.*, 89 Wash. 522, 154 Pac. 1082.

Failure to Fence Railroad: See *Remington's Digest*, R. R., § 88; *Oregon R. & Nav. Co. v. Dacres*, 1 Wash. 195, 23 Pac. 415; *Timm v. Northern Pac. R. Co.*, 3 W. T. 299, 13 Pac. 415; *Snodgrass v. Spokane & Inland Empire R. Co.*, 87 Wash. 308, 151 Pac. 815; *Benn v. Chicago, Milwaukee & St. Paul R. Co.*, 89 Wash. 522, 154 Pac. 1082; *Hanson v. Northern Pac. R. Co.*, 90 Wash. 516, 156 Pac. 553, L. R. A. 1916E, 446.

§ 10509. [8732.] Negligence—Prima Facie Evidence.

In all actions against persons, companies or corporations, operating steam or electric railroads in the state of Washington, for injury to

stock by collision with moving trains, it is *prima facie* evidence of negligence on the part of such person, company or corporation, to show that the railroad track was not fenced with a substantial fence or protected by a sufficient cattle-guard at the place where the stock was injured or killed. [L. '03, p. 333, § 3; L. '07, p. 169, § 3.]

Cited in 101 Wash. 459.

Presumptions and Burden of Proof: See Remington's Digest, R. R., § 94; Dickey v. Northern Pac. R. Co., 19 Wash. 350, 53 Pac. 347.

— **Admissibility of Evidence:** See Remington's Digest, R. R., § 95; Oregon Ry. & Nav. Co. v. Dacres, 1 Wash. 195, 23 Pac. 415; Townsend v. Northern Pac. R. Co., 29 Wash. 185, 69 Pac. 750; Taylor v. Spokane Falls & N. R. Co., 32 Wash. 450, 73 Pac. 499; Rafferty v. Portland, V. & Y. R. Co., 32 Wash. 259, 73 Pac. 382.

Sufficiency of Evidence: See Remington's Digest, R. R., § 96; Timm v. Northern Pac. R. Co., 3 W. T. 299, 13 Pac.

415; Snodgrass v. Spokane & Inland Empire R. Co., 87 Wash. 308, 151 Pac. 815; Benn v. Chicago, Milwaukee & St. Paul R. Co., 89 Wash. 522, 154 Pac. 1082; Willett v. Oregon-Washington R. & Nav. Co., 94 Wash. 71, 162 Pac. 14.

Questions for Jury: See Remington's Digest, R. R., § 98; Rafferty v. Portland, V. & Y. R. Co., 32 Wash. 259, 73 Pac. 382; Curtis v. Oregon R. & Nav. Co., 36 Wash. 55, 78 Pac. 133.

— **Verdict, Findings and Costs:** See Remington's Digest, R. R., §§ 99, 100; Curtis v. Oregon R. & Nav. Co., 36 Wash. 55, 78 Pac. 133; Jolliffe v. Brown, 14 Wash. 155, 44 Pac. 149, 53 Am. St. Rep. 868.

§ 10510. [8733.] Grade Crossings Prohibited.

All railroads and extensions of railroads hereinafter constructed within the state of Washington shall cross all established and existing railroads and established and existing highways by either passing over or under such highways and railroads and shall not cross the same at grade without first obtaining the consent of the railroad commission of Washington permitting the same to be done, and all highways and extensions of highways hereafter laid out and constructed shall cross railroads by either passing over or under such railroad and shall not cross at grade without first obtaining the consent of such commission authorizing the same to be done. [L. '09, p. 618, § 1.]

See *supra*, § 10405, to stop at crossings.

See notes to § 10340.

§ 10511. [8733-1.] Grade Crossings—Definitions.

The term "commission," when used in this act, means the Public Service Commission of Washington.

The term "highway," when used in this act, includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

The term "railroad," when used in this act, means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The said term shall also include every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners

or operators or of a limited class of persons, with all tracks, spurs and sidings used in connection therewith. The said term shall not include street railways operating within the limits of any incorporated city or town.

The term "railroad company," when used in this act, includes every corporation, company, association, joint stock association, partnership or persons, its, their or his lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad, as that term is defined in this section.

The term "over-crossing," when used in this act, means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing," when used in this act, means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "grade crossing," when used in this act, means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade. [L. '13, p. 74, § 1.]

See notes to § 10340.

Cited in 109 Wash. 308.

§ 10512. [8733-2.] Grade Crossing Prohibited.

All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: Provided, that this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry. [L. '13, p. 75, § 2.]

Cited in 94 Wash. 11, 12; 112 Wash. 42.

Jurisdiction of public service commission to make regulations respecting grade crossings. Ann. Cas. 1915C, 1289; 32 L. R. A. (N. S.) 654.

Power to compel railroad company to

establish or maintain at its own expense an overhead or underground crossing. L. R. A. 1915E, 751.

Power of public service commission with respect to crossing of steam road by street railway. 5 A. L. R. 56.

§ 10513. [8733-3.] Petitions for New Crossings—Hearing—Notice—Damage.

Whenever any railroad company desires to cross any highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade, and whenever the county commissioners of any county, or the municipal authorities of any city or town, or the state officers authorized to lay out and construct state roads, desire to lay out or extend any highway across any railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving such petition the commission shall immediately investigate the same, giving at least ten days' notice to the railroad company or companies and the county or municipality affected thereby, of the time and place of such investigation, to the end that all parties interested may be present and be heard. If the highway involved is a state road, the state highway commissioner shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If the commission finds that it is not practicable to cross the railroad or highway either above or below grade, it shall make and file a written order in the cause, granting the right and privilege to construct a grade crossing. The commission, in its discretion, may provide in the order authorizing the construction of a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and its employees. If upon investigation the commission shall find that it is impracticable to construct an over-crossing or under-crossing on the established or proposed highway, and shall find that by deflecting the established or proposed highway a practicable and feasible over-crossing or under-crossing or a safer grade crossing can be provided, it shall continue the hearing on the petition and hold a supplemental hearing thereon. At least ten days' notice of the time and place of such supplemental hearing shall be given to all land owners that may be affected by the proposed change in location of the highway. At such supplemental hearing the commission shall inquire into the propriety, advisability and necessity of changing and deflecting the highway as proposed for the purpose of securing an over-crossing, under-crossing, or safer grade crossing. If the proposed change in route of the highway involves the abandonment and vacation of a portion of an established highway, the owners of land contiguous to the portion of the highway to be vacated and abandoned shall, in like manner, be notified of the time and place of the supplemental hearing. At the conclusion of the hearing on the petition, the commission shall make and file its findings of fact in writing concerning the matters inquired into, and shall determine the location of the crossing which may be constructed, and whether the same shall be an under-crossing, over-crossing, or grade crossing, and shall determine whether or not any proposed change in the route of an existing highway, or the abandonment of a portion thereof is advisable or necessary to secure an over-crossing, under-crossing, or

safer grade crossing. If the commission shall find and determine that a change in route of an existing highway, or abandonment and vacation of a portion thereof is necessary or advisable, it shall further find and determine what private lands, property, or property rights, if any, it is necessary to take, damage, or injuriously affect, for the purpose of laying out and constructing the highway along a new route, and what private lands, property or property rights, if any, will be affected by the proposed abandonment and vacation of a portion of an existing highway. The lands, property, and property rights found necessary to be taken, damaged, or affected shall be described in said findings with reasonable accuracy, and the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided. In any action brought to acquire the right to take, damage, or injuriously affect any such lands, property, or property rights, the findings of the commission shall be conclusive as to the necessity for taking, damaging, or injuriously affecting the same. A copy of said findings shall be served upon all parties to the cause. [L. '13, p. 76, § 3.]

Cited in 94 Wash. 11, 14, 15.

§ 10514. [8733-4.*]Petitons for Change in Existing Crossings—Notice—Findings—Order.

The mayor and city council, or other governing body of any city or town, or the county commissioners of any county within which there exists any under-crossing, over-crossing or grade crossing, or where any street or highway is proposed to be located or established across any railroad, or any railroad company whose road is crossed by any highway, may file with the commission their or its petition in writing, alleging that the public safety requires the establishment of an under-crossing or over-crossing, or an alteration in the method and manner of an existing crossing, and its approaches, or in the style and nature of construction of any existing over-crossing, under-crossing or grade crossing, or a change in the location of an existing highway or crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing, or if not practicable, to change such crossing from grade or to close and discontinue the same, the opening of an additional crossing for the partial diversion of travel and praying that the same may be ordered. If the existing or proposed crossing is on a state road or highway the petition may be filed by the state highway commissioner. Upon such petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than ten days' notice thereof to the petitioner, the railroad company and the municipality or county in which the crossing is situate. If the highway involved is a state highway like notice shall be given to the state highway commissioner. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up a new route for the highway, or requires that any portion of any existing highway be vacated and abandoned, ten days' notice of the hearing shall be given to the owner or owners of the private lands, property, and property rights which it is necessary to take, damage or injuriously affect, and to the owner or owners of the

private lands, property, or property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause said notice of hearing to be published once in some newspaper of general circulation in the community where such crossing is situate, which publication shall appear at least two days prior to the date of hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence. At the conclusion of the hearing the commission shall make and file its written findings of fact concerning the matters inquired into in like manner as provided in the preceding section for findings of fact upon petition for new crossings. The commission shall also enter its order based upon said findings of fact, which shall specify whether the highway shall continue at grade or whether it shall be changed to cross over or under the railroad in its existing location or at some other point, and whether an over-crossing or under-crossing shall be established at the proposed location of any street or highway or at some other point, or whether the style and nature of construction of an existing crossing shall be changed, or whether said highway shall be closed and travel thereon diverted to another channel, or any other change that the commission may find advisable or necessary. In case the order made requires that private lands, property, or property rights be taken, damaged or injuriously affected, the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided.

Any petition herein authorized may be filed by the commission on its own motion, and proceedings thereon shall be the same as herein provided for the hearing and determination of a petition filed by a railroad company. [L. '21, p. 494, § 1; L. '13, p. 78, § 4.]

Cited in 98 Wash. 649.

Rem. Code, § 8733-4, expressly provided that the public service commission may on its own motion file a petition for a

change or elimination of a grade crossing: State ex rel. Hayford v. Public Serv. Com., 98 Wash. 648, 168 Pac. 169.

§ 10515. [8733-5.] Duty to Maintain Crossings.

When a highway crosses a railroad by an over-crossing or under-crossing, the framework and abutments of the over-crossing or under-crossing, as the case may be, shall be maintained and kept in repair by the railroad company, and the roadway thereover or thereunder and approaches thereto shall be maintained and kept in repair by the county or municipality in which the same are situated, or if the highway is a state road, the roadway over or under the railroad shall be maintained and kept in repair as provided by law for the maintenance and repair of state roads: Provided, however, that this section shall not apply to over-crossings or under-crossings constructed prior to the passage of this act under special contracts between a railroad company and any county, municipality, or the state, in which different provision is made for the maintenance and repair of the under-crossing or over-crossing. [L. '13, p. 79, § 5.]

Cited in 109 Wash. 308.

Under this section, everything above the framework and abutments would be

part of the roadway, and the railway company would not be responsible for a defective bulkhead or railing above the

planking of the roadway: *Pridmore v. Northern Pacific R. Co.*, 109 Wash. 305, 186 Pac. 862.

In such a case, if the curve was dangerous, there could be no recovery

against the railway company, since the danger would depend upon protection by a barrier or guard-rail: *Pridmore v. Northern Pacific R. Co.*, 109 Wash. 305, 186 Pac. 862.

§ 10516. [8733-6.*] Apportionment of Cost of Crossings.

SUBDIVISION A.

Whenever, under the provisions of this act, new railroads are constructed across existing highways, or highway changes are made either for the purpose of avoiding grade crossings on such new railroads, or for the purpose of crossing at a safer and more accessible point than otherwise available, the entire expense of crossing above or below the grade of the existing highway, or changing the route thereof, for the purpose mentioned in this subdivision, shall be paid by the railroad company.

SUBDIVISION B.

Whenever, under the provisions of this act, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed, or the style and nature of construction of an existing crossing is changed, the entire expense of constructing an over-crossing, under-crossing, or safer grade crossing, or changing the nature and style of construction of an existing crossing, including the expense of constructing approaches to such crossing and the expense of securing rights of way for such approaches, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road, between the railroad and the state, as justice may require, regard being had for the benefits accruing to the railroad, municipality, county or state by reason of the improvement. If the highway involved is a state road, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road. When an existing grade crossing is ordered eliminated by the construction of an over-crossing or under-crossing, the commission may in its discretion pay an amount not to exceed ten per cent of the cost thereof out of the appropriation provided in this act, and in such case the state auditor is hereby authorized and required upon the requisition of the commission, to draw warrants on the state treasury payable to the party designated by the commission for such amount, and the state treasurer is hereby authorized and required to pay such warrants on presentation.

SUBDIVISION C.

Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing or grade crossing required or permitted by this act or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county or to the state, shall be apportioned between said railroad companies by the commission unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least

ten days' notice of which shall be given. [L. '21, p. 496, § 2; L. '13, p. 80, § 6.]

See notes to § 10340.

Cited in 94 Wash. 12, 15.

Crossing Other Railroads—Mode and Expense: See Remington's Digest, R. R., §§ 27, 28, and cases cited.

Under Rem. Code, § 8733-6, subdivision c (prior to amendment), providing that the portion of the expense of making a railroad crossing at grade not chargeable to a county or city shall be apportioned between the railroad companies, means not only the expense of constructing the actual crossing, but the expense of constructing and maintaining such protective devices as the public service commission may require: State ex rel. Puget Sound & Willapa Harbor R. Co. v. Northern Pac. R. Co., 94 Wash. 10, 161 Pac. 850.

In the absence of a statute to the contrary, a railroad desiring to cross another at grade must bear the expense of the crossing, including the cost of installing and maintaining such safety devices as the necessities of the case require: State ex rel. Puget Sound & Willapa Harbor R. Co. v. Northern Pac. R. Co., 94 Wash. 10, 161 Pac. 850.

The railroad company first in time takes its right subject to being crossed by the line of another railway; hence Rem. Code, § 8733-6, did not violate the constitutional inhibition against taking private property for public use without compensation: State ex rel. Puget Sound & Willapa Harbor R. Co. v. Northern Pac. R. Co., 94 Wash. 10, 161 Pac. 850.

Under Rem. Code, § 8733-6, subdivision c, providing that the portion of the expense of making a railroad crossing at grade not chargeable to a county or city

shall be apportioned between the railroad companies, the public service commission could not charge the entire cost against the road desiring the crossing, merely because the older company was first in point of time, where the record shows no equity in favor of one road over the other; since to require one road to bear all the expense is not an "apportionment": State ex rel. Puget Sound & Willapa Harbor R. Co. v. Northern Pac. R. Co., 94 Wash. 10, 161 Pac. 850.

In apportioning the costs of interlocking devices to be maintained at a grade crossing, the public service commission should not be governed by the priority of the pioneer road, nor by the character of the service or construction by the crossing road; but is to exercise its discretion on the resulting convenience and inconvenience: State ex rel. Tacoma Eastern R. Co. v. Northern Pac. R. Co., 104 Wash. 405, 176 Pac. 539.

In the absence of abuse or arbitrary action, the courts will not review the discretion of the public service commission in apportioning the cost of interlocking devices; and no abuse appears in apportioning two-thirds of the cost to the petitioner seeking to cross a main line road by its branch line, to serve Camp Lewis on request of the government; considering the greater number of trains run on the main line, and the fact that the branch line was for the benefit of territory devoted to a particular use: State ex rel. Tacoma Eastern R. Co. v. Northern Pac. R. Co., 104 Wash. 405, 176 Pac. 539.

§ 10517. [8733-7.] Payment of Costs and Apportionment of Construction Work.

In the construction of new railroads across existing highways, the railroads shall do or cause to be done all the work of constructing the crossings and road changes that may be required, and shall acquire and furnish whatever property or easements may be necessary, and shall pay, as provided in the preceding section, the entire expense of such work including all compensation or damages for property or property rights taken, damaged or injuriously affected. In all other cases the construction work may be apportioned by the commission between the parties who may be required to contribute to the cost thereof as the parties may agree, or as the commission may consider advisable. All work within the limits of railroad rights of way shall in every case be done by the railroad company owning or operating the same. The cost of acquiring additional lands, rights or easements to provide for the change of existing crossings shall, unless the parties otherwise agree, in the first instance

be paid by the municipality or county within which the crossing is located; or in the case of a state road, shall be paid in the manner provided by law for paying the cost of acquiring lands, rights or easements for the construction of state roads. The expense accruing on account of property taken or damaged shall be divided and paid in the manner provided for dividing and paying other costs of construction. Upon the completion of the work and its approval by the commission, an accounting shall be had, and if it shall appear that any party has expended more than its proportion of the total cost, a settlement shall be forthwith made. If the parties shall be unable to agree upon a settlement, the commission shall arbitrate, adjust and settle the account after notice to the parties. In the event of failure and refusal of any party to pay its proportion of the expense, the sum with interest from the date of the settlement may be recovered in a civil action by the party entitled thereto. In cases where the commission has settled the account, the finding of the commission as to the amount due shall be conclusive in any civil action brought to recover the same if such finding has not been reviewed or appealed from as herein provided, and the time for review or appeal has expired. If any party shall review or appeal from any finding or order of the commission apportioning the cost between the parties liable therefor, the superior court or the supreme court, as the case may be, shall cause judgment to be entered in such review proceedings for such sum or sums as may be found lawfully or justly due by one party to another. [L. '13, p. 81, § 7.]

See notes to § 10340.

§ 10518. [8733-8.] Plans and Specifications—Proposals.

Plans and specifications of changes in existing crossings proposed under this act, and an estimate of the expense thereof, shall be submitted to the commission for its approval before the commencement of the work. In case the work is to be done by contract, the proposals of the contractor shall be submitted to the commission and if it shall determine that the bids are excessive it shall have power to require the submission of new proposals. [L. '13, p. 82, § 8.]

See notes to § 10340.

§ 10519. [8733-9.] Temporary Crossings.

The commission, in its discretion, good cause appearing therefor, and upon such conditions as it may prescribe, shall have power, without notice or hearing, to grant a permit to construct and maintain a temporary grade crossing for a period not exceeding six months, and may revoke such permit at any time: Provided, that nothing contained in this section shall be construed to prohibit the commission, after notice and investigation, from permitting the maintenance of a temporary grade crossing for a longer period than six months. Any order granting, refusing to grant, or revoking a permit for a temporary grade crossing shall not be reviewable. [L. '13, p. 83, § 9.]

See notes to § 10340.

§ 10520. [8733-10.] Commission may Fix Time.

The commission, in any order requiring work to be done, shall have power to fix the time within which the same shall be performed and completed: Provided, that if any party having a duty to perform within a fixed time under any order of the commission shall make it appear to the commission that the order cannot reasonably be complied with within the time fixed by reason either of facts arising after the entry of the order or of facts existing prior to the entry thereof that were not presented, and with reasonable diligence could not have been sooner presented to the commission, such party shall be entitled to a reasonable extension of time within which to perform the work. An order of the commission refusing to grant an extension of time may be reviewed as provided for the review of other orders of the commission. [L. '13, p. 83, § 10.]

See notes to § 10340.

§ 10521. [8733-11.] Practice and Procedure Before Commission.

Modes of procedure under this act, unless herein otherwise provided, shall be as provided in the Public Service Commission law, being chapter 117, of the Laws of 1911 for procedure under that act. The commission is hereby given power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings under this act. [L. '13, p. 83, § 11.]

See notes to § 10340.

The reference in this section is to §§ 10339 to 10459 herein.

§ 10522. [8733-12.] Notices—Form and Manner of Service.

All notices required to be served by this act shall be in writing, and shall briefly state the nature of the matter to be inquired into and investigated. Notices may be served in the manner provided by law for the service of summons in civil cases, or by registered United States mail. When service is made by registered mail, the receipt of the receiving postoffice shall be sufficient proof of service. When, under the provisions of this act, it is necessary to serve notice of hearings before the commission on owners of private lands, property, or property rights, and such owners cannot be found, service may be made by publication in the manner provided by law for the publication of summons in civil actions, except that publication need be made but once each week for three consecutive weeks, and the hearing may be held at any time after the expiration of thirty days from the date of the first publication of the notice. [L. '13, p. 84, § 12.]

§ 10523. [8733-13.] Review and Appeal.

Upon the petition of any party to a proceeding before the commission, any finding or findings, or order or orders of the commission, made under color of authority of this act, except as otherwise provided in section 10519, may be reviewed in the superior court of the county in which the crossing is located, and the reasonableness and lawfulness of such finding or findings, order or orders inquired into and determined, as provided in the public service commission law (chapter 117, Laws 1911) for the

review of findings and orders made under that act. An appeal may be taken to the supreme court from the judgment of the superior court in like manner as provided in said public service commission law for appeals to the supreme court. [L. '13, p. 84, § 13.]

See notes to § 10340.

See note to § 10521.

Cited in 98 Wash. 650.

Under this section, providing that an order of the public service commission eliminating a grade crossing may be reviewed and the reasonableness and lawfulness determined, an order which the

commission had power to make will not be disturbed unless there is a showing of unreasonableness or unlawfulness: State ex rel. Hayford v. Public Serv. Com., 98 Wash. 648, 168 Pac. 169.

§ 10524. [8733-14.] Employment of Engineers and Other Employees.

The commission may employ temporarily such experts, engineers, and inspectors as may be necessary to supervise changes in existing crossings undertaken under this act; the expense thereof shall be paid by the railroad upon the request and certificate of the commission, said expense to be included in the cost of the particular change of grade on account of which it is incurred, and apportioned as provided in this act.

The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this act, and the expense thereof shall be paid out of the appropriation herein provided. [L. '13, p. 85, § 14.]

See notes to § 10340.

§ 10525. [8733-15.] Eminent Domain.

Whenever to carry out any work undertaken under this act it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation as hereinafter provided.

Subd. A. In cases where new railroads are constructed and laid out by railroad company authorized to exercise the power of eminent domain, the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by the railroad company by a condemnation proceedings brought in its own name and prosecuted as provided by law for the exercise of the power of eminent domain by railroad companies, and the right of eminent domain is hereby conferred on railroad companies for the purpose of carrying out the requirements of this act or the requirements of any order of the commission.

Subd. B. In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by a

condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road.

Subd. C. In cases where the commission orders changes in existing crossings to secure an under-crossing, over-crossing, or safer grade crossing, and it is necessary to take, damage, or injuriously affect private lands, property, or property rights to execute the work, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired in a condemnation proceeding prosecuted in the name of the state of Washington by the attorney general under the laws relating to the exercise of the power of eminent domain by cities of the first class for street and highway purposes: Provided, however, that in the cases mentioned in this subdivision the full value of any lands taken shall be awarded, together with damages, if any accruing to the remainder of the land not taken by reason of the severance of the part taken, but in computing the damages to the remainder, if any, the jury shall offset against such damages, if any, the special benefits, if any, accruing to such remainder by reason of the proposed improvement. The right of eminent domain for the purposes mentioned in this subdivision is hereby granted. [L. '13, p. 85, § 15.]

See notes to § 10340.

Cited in 98 Wash. 651.

§ 10526. [8733-16.] Illegal Crossings Enjoined or Abated as Nuisance.

If an under-crossing, over-crossing, or grade crossing is constructed, maintained, or operated, or is about to be constructed, operated, or maintained, in violation of the provisions of this act, or in violation of any order of the commission, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances. Suits to enjoin or abate may be brought by the attorney general, or by the prosecuting attorney of the county in which the unauthorized crossing is located. [L. '13, p. 86, § 16.]

See notes to § 10340.

§ 10527. [8733-17.] Mandamus.

If any railroad company, county, municipality, or officers thereof, or other person, shall fail, neglect, or refuse to perform or discharge any duty required of it or them under this act or any order of the commission, the performance of such duty may be compelled by mandamus, or other appropriate proceeding prosecuted by the attorney general upon the request of the commission. [L. '13, p. 87, § 17.]

§ 10528. [8733-18.] Penalty for Violation by Railroad.

If any railroad company shall fail or neglect to obey, comply with, or carry out the requirements of this act, or any order of the commission made under it, such company shall be liable to a penalty not to exceed five thousand dollars, such penalty to be recovered in a civil action brought in the name of the state of Washington by the attorney general. All penalties recovered shall be paid into the state treasury. [L. '13, p. 87, § 18.]

§ 10529. [8733-19.] Obstructions in Highways.

Whenever to carry out any work ordered under this act, it is necessary to erect and maintain posts, piers, or abutments in a highway, the right and authority to erect and maintain the same is hereby granted. [L. '13, p. 87, § 19.]

§ 10530. [8733-20.] No New Right of Action Conferred.

Nothing contained in this act shall be construed as conferring a right of action for the abandonment or vacation of any existing highway or portion thereof in cases where no right of action exists independent of this act. [L. '13, p. 87, § 20.]

§ 10531. [8733-21.] Act When not Operative.

This act shall not be operative within the limits of cities authorized to frame their own charters, and it shall not be construed to apply to street railway lines operating in, on, through, along, over, or across any street, alley or other public place within the limits of any incorporated city or town, except that no street-car line outside of cities authorized to frame their own charters shall cross a railroad at grade without express authority from the commission. [L. '13, p. 88, § 21.]

§ 10532. [8733-22.] Constitutionality.

If any section, subdivision, sentence, or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. [L. '13, p. 88, § 22.]

§ 10533. [8734.] Petition for Grade Crossing—Hearing—Safety Devices.

Whenever any railroad company desires to cross any established and existing highway or railroad at grade, it shall file with the railroad commission of Washington its petition in writing setting forth the objections and difficulties to making such crossing either above or below the grade of such highway or railroad; and whenever the county commissioners of any county or the municipal authorities of any city or town desire to lay out or extend any highway over and across any established and existing railroad at grade, they shall file with the railroad commission of Washington their petition in writing setting forth the objections and difficulties of making such crossing either above or [below] the grade of such railroad. On receiving such petition it shall be the duty of the railroad commission to immediately investigate the same, notifying the railroad company and the county or municipality affected thereby of the time and place of such investigation, to the end that all parties interested may be present and heard at such investigation. The evidence introduced shall be reduced to writing and filed by the commission. If the commission finds that it ought not to require such highway or railroad to be so constructed as to cross above or below the grade of the existing railroad or highway, it shall by resolution filed in the cause and duly entered upon its minutes, grant the right and privilege to construct such railroad or highway across such established railroad or highway at grade. The commission may in its discretion

provide that such railroad shall, before operating its trains over any established highway or at any subsequent time, install and maintain proper signal, warnings, gates or other devices to warn and protect the public, and it may also require such railroad before operating its trains over and across such established railroad at grade, or at any subsequent time, to install and maintain proper interlocking devices and gates or flagmen to protect the traveling public and railroad employees, and may order the installation and maintenance of proper signals, warning, gates or other devices to warn and protect the public, before granting permission for such highway to be constructed across said established railroad at grade. The cost and expenses of such installation shall be apportioned by the railroad commission in such manner as shall be just and equitable under the circumstances surrounding each case. [L. '09, p. 618, § 2.]

See notes to § 10340.

See *infra*, § 11082, franchises for electric railroads, cities and counties.

§ 10534. [8735.] Not Applicable to Charter Cities.

The two preceding sections shall not be construed as applying to highways and railroads in cities framing their own charters. [L. '09, p. 619, § 3.]

§ 10535. [8736.] Right to Cross Other Roads in Cities Framing Own Charters.

Every corporation formed under this act for the construction of a railroad shall have the power to cross, intersect, join and unite its railway with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turnouts, sidings, switches, and other conveniences in furtherance of the objects of its connections, and every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manners of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of its road, and every corporation formed under this act for the construction of a canal shall have the power to cross and intersect any railway before constructed at any point on its road and upon the grounds of such other railway company, and every corporation whose railway is or shall hereafter be crossed or intersected by any canal shall unite with the corporation owning such canal in forming such crossings and intersections and grant the facilities therefor, and if the two corporations cannot agree upon the compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of said canal. [Cf. Cd. '81, § 2456½; L. '88, p. 64, § 3; 1 H. C., § 1571; L. '95, p. 148, § 3.]

"Act" refers to §§ 10536, 10538, 10539 and 6585—6597.

Superseded by the preceding sections except as to highways and railroads in cities framing their own charters.

See *supra*, § 7455, crossing by irrigating ditches.

See *infra*, § 10535, crossing by canals.

Cited in 7 Wash. 163, 167, 170; 45 Wash. 276; 46 Wash. 520; 47 Wash. 171; 64 Wash. 198, 199; 70 Wash. 542.

Where a railway in process of construction crosses or parallels an existing railway, it must accommodate itself to the established way of the latter, and cannot be so constructed as to overlap the existing track or right of way longitudinally, so that either track cannot be operated when the other is in use: *Seattle & M. Ry. Co. v. State*, 7 Wash. 150, 34 Pac. 551, 38 Am. St. Rep. 866, 22 L. R. A. 217.

An intersecting road should attempt to agree with the road crossed upon the point and manner of crossing and compensation therefor, before seeking the interposition of a court in proceedings to appropriate the right of way: *Id.*

A railroad seeking condemnation proceedings to appropriate right of way for crossing the tracks of another railway may, by stipulation tendered, assume the burden of maintaining frogs and crossing apparatus: *Id.*

A railroad company is not entitled to condemn a right of way across the terminal grounds and spur tracks of another company, already devoted to a public use, and in such a manner as to interfere with such prior use, by virtue of this section, where it appears that there is a reasonable route either to the north or south of such terminal grounds, and no reasonable necessity appears: *State ex rel. Portland & Seattle R. Co. v. Superior Court*, 45 Wash. 270, 88 Pac. 201.

Under this section one railroad may condemn a crossing over, or part of the right of way of, another road if there is a necessity therefor and the same can be taken without material detriment to the established road: *State ex rel. Kent Lumber Co. v. Superior Court*, 46 Wash. 516, 90 Pac. 663.

A congressional grant of a railroad right of way of a certain width is not conclusive of the fact that the entire width was necessary for the purposes of the railroad as against another railroad seeking to condemn a portion thereof for public purposes: *North Coast R. v. Northern Pacific R. Co.*, 48 Wash. 529, 94 Pac. 112.

The right of eminent domain under state laws may be exercised by a railroad company to condemn a longitudinal portion of a right of way granted by congress to another railroad company, if public necessity therefor exists and the occupying railroad does not require the portion taken: *Id.*

In condemning the right to cross at grade the right of way of a prior railroad company, it is proper to charge to the petitioner the cost of installing and maintaining a necessary interlocking device as to the tracks already in operation, or to be constructed within a reasonable time by the prior company to accommodate business already accumulated; but it is error to cover any or all tracks that the prior company might construct at that point in the future, or to confine the petitioner to a single track, as future contingencies should be left to future determination: *State ex rel. North Coast R. v. Northern Pac. R. Co.*, 49 Wash. 78, 94 Pac. 907.

This section is special in its nature and refers to the general law for procedure: *State ex rel. Postal Tel. Cable Co. v. Superior Court*, 64 Wash. 189, 116 Pac. 855.

Under this section, the court may adjudge the public use subject to defendant's right to use a logging road and upon condition to keep in repair an overhead crossing: *State ex rel. Union Lumber Co. v. Superior Court*, 70 Wash. 540, 127 Pac. 109.

§ 10536. [8737.] Construction Over Rivers, etc.—Conditions.

Every corporation formed under the laws of this state for the construction of railroads or canals shall possess the power to construct its railway or canal, as the case may be, across, along or upon any river, stream of water, watercourses, plank road, turnpike or canal, which the route of such railway or canal shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road or turnpike thus intersected or touched to its former state as near as may be, and pay any damages caused by such construction: Provided, that the construction of any railway or canal by such corporation along, across or

upon any of the navigable rivers or waters of this state shall be in such manner as to not interfere with, impede or obstruct the navigation thereof; and all rights, privileges and powers of every description by law conferred upon road or railroad companies are hereby given and granted to canal companies so far as the same may be applicable, and all power and authority possessed by the public or municipal corporations of the state or their local authorities, with reference to road or railroad companies, may be exercised by them with reference to canal companies. [L. '88, p. 64, § 3; 1 H. C., § 1572; L. '95, p. 148, § 4.]

See §§ 6585—6597, *supra*, for the balance of this act, more particularly applicable to roads and highways.

See *supra*, § 10468.

Cited in 7 Wash. 152; 54 Wash. 536; 62 Wash. 102; 88 Wash. 88, 90.

This section requiring railroads to restore streams crossed has no application where the roadbed was not maintained in the course or channel of the river or encroached upon: *Bachman v. Oregon-Wash. R. & Nav. Co.*, 88 Wash. 81, 152 Pac. 700.

This section expressly conferring upon railroads the right to cross any river, stream or watercourse, excludes by impli-

cation the right to appropriate tide lands belonging to the state: *Seattle & M. R. Co. v. State*, 7 Wash. 150, 34 Pac. 551, 38 Am. St. Rep. 866, 22 L. R. A. 217.

An intersecting railroad cannot determine for itself the point and manner of its crossing another road, but the necessity therefor is a matter for adjudication by the court: *Seattle & M. R. Co. v. State*, 7 Wash. 150, 34 Pac. 551, 38 Am. St. Rep. 866, 22 L. R. A. 217.

§ 10537. [8738.] Change of Grade or Location of Road or Canal.

Any corporation may change the grade or location of its road or canal, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel, or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change shall have the same right to enter upon, examine, survey, and appropriate the necessary lands and materials as in the original location and construction of such road or canal. [L. '69, p. 343, § 3; Cd. '81, § 2457; 1 H. C., § 1573.]

Cited in 62 Wash. 102; 64 Wash. 600; 68 Wash. 575.

A railroad company may make a change in its location in order to correct an error in engineering, where it was found that high water in a river did not

admit of a grade line upon the route as surveyed and adopted; both at common law and by virtue of this section: *State ex rel. Sylvester v. Superior Court*, 64 Wash. 594, 117 Pac. 487.

CHAPTER VIII.

APPROPRIATION OF LANDS AND HIGHWAYS FOR CORPORATE PURPOSES.

§ 10538. [8739.] Right to Enter Lands for Survey, etc.

A corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, shall have a right to enter upon any land, real estate or premises, or any of the lands granted to the state of Washington for school, university or other purposes, between the termini thereof, for the purpose of examining, locating and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby. [Cf. L. '69, p. 343, § 1; Cd. '81, § 2455; L. '88, p. 63, § 1; 1 H. C., § 1569; L. '95, p. 146, § 1.]

See supra, § 921 et seq., appropriation of lands for private corporations.

See supra, § 933, appropriation through process.

See supra, §§ 8088—8098, over state lands.

See supra, § 10463, right of eminent domain.

Cited in 6 Wash. 576; 7 Wash. 151, 167; 31 Wash. 452; 36 Wash. 385; 62 Wash. 101.

§ 10539. [8740.] Extent of Right of Appropriation.

Every corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, is hereby authorized and empowered to appropriate, by condemnation, land and any interest in land or contract right relating thereto, including any leasehold interest therein and any rights of way for tunnels beneath the surface of the land, and any elevated rights of way above the surface thereof, including lands granted to the state for university, school or other purposes, and also tide and shore lands belonging to the state (but not including harbor areas), which may be necessary for the line of such road, railway or canal, or site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for toll-houses, workshops, materials for construction, excavations and embankments and a right of way over adjacent lands or property, to enable such corporation to construct and prepare its road, railway, canal or bridge, and to make proper drains; and in case of a canal, whenever the court shall deem it necessary, to appropriate a sufficient quantity of land, including lands granted to the state for university, school or other purposes, in addition to that before specified in this section, for the construction and excavation of such canal and of the slopes and berms thereof, not exceeding one thousand feet in total width; and in case of a railway to appropriate a sufficient quantity of any such land, including lands granted to the state for university, schools and other purposes and also tide and shore lands belonging to the state (but not including harbor areas), in addition to that before specified in this section, for the necessary sidetracks, depots and water stations, and the right to conduct water thereto by aqueduct, and for yards, terminal, transfer and switching grounds, docks and warehouses required for receiving, delivering, storage and handling of freight, and such land, or any interest therein, as may be necessary for the security and safety of the public in the construction, maintenance and operation of its railways; compensation therefor to be made to the owner thereof irrespective of any benefit from any improvement proposed by such corporation, in the manner provided by law: And provided further, that if such corporation locate the bed of such railway or canal upon any part of the track now occupied by an established state or county road, said corporation shall be responsible to the county commissioners of said county or counties in which such state or county road so appropriated is located, for all expenses incurred by such county or counties in relocating and opening the part of such road so appropriated. The term land as herein used includes tide and shore lands but not harbor areas; it also includes any interest in land or contract right relating thereto, including any leasehold interest therein. [L. '07, p. 674, § 1. Cf. L. '69, p. 343, § 2; Cd.

'81, § 2456; L. '88, p. 63, § 2; 1 H. C., § 1570; L. '95, p. 147, § 2; L. '03, p. 383, § 1.]

As to the mode of proceeding to appropriate land, see §§ 921—936, *supra*.

Former laws cited in 7 Wash. 151; 31 Wash. 452; 47 Wash. 170; 49 Wash. 388; 54 Wash. 533; 62 Wash. 101, 104; 64 Wash. 600; 65 Wash. 105; 68 Wash. 400, 575; 79 Wash. 41; 83 Wash. 330.

Cited in 91 Wash. 457; 102 Wash. 334.

Under this section prior to amendment, tide lands belonging to the state could not be taken under the power of eminent domain as applied to railroads, for the reason that the law had application only to the taking of private and not public property: *Seattle & M. Ry. Co. v. State*, 7 Wash. 150, 34 Pac. 551, 38 Am. St. Rep. 373, 22 L. R. A. 217.

This section originally authorized the condemnation of lands by a railway company for a right of way: *State ex rel. Trimble v. Superior Court*, 31 Wash. 445, 72 Pac. 89, 66 L. R. A. 897.

The power conferred by this section, authorizing a railway company to condemn lands for depots, yards, terminals, etc., is a continuing power, not exhausted by its exercise in the first instance, and may be resorted to to change the location of the depot; hence it is unnecessary, in condemning for a connection between a main line and new terminals in a city, that there be a resolution of the board of directors in any particular form, as required by section 10460, relating to the construction of branch lines: *State ex rel. Northern Pac. R. Co. v. Superior Court*, 68 Wash. 397, 123 Pac. 529.

Power in General: See Remington's Digest, Em. Dom., §§ 6—19, and cases cited.

Under this section it was not a condition precedent to condemnation proceedings by a railroad company (except in case of railroad crossings) that the com-

pany should attempt to agree with the owner as to the compensation to be paid for land already devoted to a public use: *State ex rel. Skamania Boom Co. v. Superior Court*, 47 Wash. 166, 91 Pac. 637.

As to the priority of conflicting locations by railroad companies, see *Columbia Valley R. Co. v. Portland & Seattle R. Co.*, 49 Wash. 88, 94 Pac. 918.

This section did not authorize condemnation of land held in trust for the public as a city street, since the law must be construed to relate to private property only, in the absence of an express or implied authority to take public lands: *State ex rel. Schade Brewing Co. v. Superior Court*, 62 Wash. 96, 113 Pac. 576.

This includes the equitable interest in tide lands held by purchasers from the state under contract of sale, subject only to the right of re-entry and forfeiture on the part of the state for failure to pay the balance of the purchase price according to the terms of the state's contract: *State ex rel. Trimble v. Superior Court*, 31 Wash. 445, 22 Pac. 89.

This section authorizes an appropriation for a slip or waterway adjoining a proposed dock: *State ex rel. Patterson v. Superior Court*, 102 Wash. 331, 173 Pac. 186.

This section refers to state lands held in a proprietary capacity only: *State v. Superior Court*, 91 Wash. 454, 157 Pac. 1097.

Negligence cannot be predicated upon the mere construction of a railroad upon a highway under this section: *Engelsen v. Spokane, Portland etc. R. Co.*, 79 Wash. 39, 139 Pac. 599.

CHAPTER IX.

CONDITIONAL SALES OF ROLLING STOCK AND RAILWAY EQUIPMENTS.

§ 10540. [8741.] Contract of Sale or Lease.

In any contract of, or for the sale of railroad equipment or rolling stocks, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although deliverable immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money; and in any contract of, or for the leasing of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and that the rentals received may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or vendee until the purchase price shall be paid in full, notwithstanding

delivery to and possession by such lessee or vendee: Provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser, for value and without notice, unless,—

1. The same shall be evidenced by an instrument duly acknowledged before some person authorized by law to take acknowledgments of deeds;

2. Such instruments shall be filed for record in the office of the county auditor of the county in which, at the time of the execution thereof, is situated the principal office of the vendee or lessee within this territory;

3. Each locomotive engine or car so sold, or contracted to be sold, or leased, as aforesaid, shall have the name of the vendor or lessee plainly marked on each side thereof, followed by the word "owner" or "lessor," as the case may be. [L. '83, p. 63, § 1; 1 H. C., § 1456.]

See *supra*, § 3779, rolling stock may be mortgaged.

See *infra*, §§ 11160—11171, taxation of property.

Cited in 94 Wash. 497—499.

A conditional sale of a logging engine, to be used exclusively on a short logging track falls within section 3790, and not this section, which applies only to common carriers: *Brady & Son v. Bell*, 94 Wash. 496, 162 Pac. 865.

The complaint fails to state a cause of action, in an action against a railroad company, under this section, to recover the cost of relocating and opening a portion of a county road alleged to have been appropriated by the company, where

there is no allegation that the road has been relocated or opened, or that any expense has been incurred: *Weymouth v. Port Townsend So. R. Co.*, 6 Wash. 575, 34 Pac. 154.

Under this section and § 927, *supra*, devotion of the property to a private purpose is an abandonment which calls for an explanation to avoid a reversion: *Neitzel v. Spokane International R. Co.*, 65 Wash. 100, 117 Pac. 864, 36 L. R. A. (N. S.) 522.

§ 10541. [8742.] Recording of Contract.

The contracts herein authorized shall be recorded by the said county recorder, in the book of records of mortgages of real estate in said county; and on payment in full of purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor or his assignee, which declaration may be made on the margin of the record of the contract, attested by the said recorder, or it may be made by a separate instrument, to be acknowledged and recorded as aforesaid, and for such services the county recorder shall be entitled to the fees provided by law for the recording of deeds and mortgages of real estate. [L. '83, p. 62, § 2; 1 H. C., § 1457.]

CHAPTER X.

SPECIAL POLICE FOR RAILROADS.

§ 10542. [8742-1.] Appointment by Governor.

The governor shall have the power to and may in his discretion appoint and commission special police officers at the request of any steam or electric railroad corporation and may revoke any such appointment at his pleasure. [L. '15, p. 339, § 1.]

§ 10543. [8742-2.] Application for Special Police.

Any steam or electric railroad corporation desiring the appointment of any of its officers, agents or servants not exceeding five in number for any one division of any railroad operating in this state, (division, as herein intended, shall mean the part of any railroad or railroads under the jurisdiction of any one division superintendent), as special police officers shall file with the governor an application stating the name, age and place of residence of the person whose appointment it desires, the position he occupies with the steam or electric railroad corporation, the nature of his duties and the reasons why his appointment is desired, which application shall be signed by the president or some managing officer of the steam or electric railroad corporation and shall be accompanied by an affidavit of such officer to the effect that he is acquainted with the person whose appointment is sought, that he believes him to be of good moral character, and that he is of such character and experience that he can be safely intrusted with the powers of a police officer. [L. '15, p. 339, § 2.]

§ 10544. [8742-3.] Oath of Policemen.

Before receiving his commission each person appointed under the provisions of this act shall take, subscribe and file with the governor an oath to support the Constitution of the United States, the Constitution and laws of the state and to faithfully perform the duties of his office. [L. '15, p. 339, § 3.]

§ 10545. [8742-4.] Duties Restricted to Railroad Property.

Every police officer appointed and commissioned under the provisions of this act shall when on duty have the power and authority conferred by law on peace officers, but shall exercise such power only in the protection of the property belonging to or under the control of the corporation at whose instance he is appointed and in preventing, and making arrest for, violations of law upon or in connection with such property. [L. '15, p. 340, § 4.]

§ 10546. [8742-5.] Badge.

Every such special police officer shall, when on duty, wear in plain view a metal shield bearing the words "special police" and the name of the corporation by which he is employed. [L. '15, p. 340, § 5.]

§ 10547. [8742-6.] Liability for Unlawful Acts.

The corporation procuring the appointment of any special police shall be solely responsible for the compensation for his services and shall be liable civilly for any unlawful act of such officer resulting in damage to any person or corporation. [L. '15, p. 340, § 6.]

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REAL PROPERTY.

TITLE LXXIII.

REAL PROPERTY.

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10708. Examiner to advise registrar—Forms—Examination of witnesses.
10709. Names and addresses of parties in interest—Service.
10710. Registration of statement of adverse interest—Hearing—Procedure.
10711. Assurance fund—How created.
10712. Investment of assurance fund.
10713. Action for recovery of damages from assurance fund.
10714. Parties defendant—Judgment—Payment—County attorney to defend.
10715. When assurance fund not liable—Maximum amount.
10716. Limitation of action against assurance fund.
10717. Alterations, etc.—Change of interests.
10718. Stealing certificates or duplicates—Grand larceny.
10719. Swearing falsely—Perjury.
10720. Penalty for fraud.
10721. Forgery a felony—Penalty.
10722. Penal action not to affect civil remedy.
10723. Fees of clerk of court.
10724. Fees of registrar.
10725. Disposition of fees—No compensation to registrar.
10726. To be construed liberally.

CHAPTER I.

AGE OF MAJORITY.

§ 10548. [8743.] Men are of Age at Twenty-one, Women at Eighteen.

Males shall be deemed and taken to be of full age for all purposes at the age of twenty-one years and upwards; females shall be deemed and taken to be of full age at the age of eighteen years and upwards. [L. '54, p. 407, § 1; L. '63, p. 434, § 1; L. '66, p. 92, § 1; Cd. '81, § 2363; 1 H. C., § 1416.]

Cited in 72 Wash. 453; 80 Wash. 617, 619; 109 Wash. 108.

A minor husband becomes of full age upon the performance of the ceremony,

and may maintain an action in his own name to secure the custody and society of his wife: *Hollopeter*, In re, 52 Wash. 41, 100 Pac. 159, 132 Am. St. Rep. 952,

17 Ann. Cas. 91, 21 L. R. A. (N. S.) 847.

Since, under section 186, *supra*, only females over twenty-one years of age may maintain an action for their own seduction, the right of action for seduc-

tion while a minor accrues to her when she becomes twenty-one years of age; and not at the age of majority, eighteen years, under this section: *Gates v. Shaffer*, 72 Wash. 451, 130 Pac. 896.

§ 10549. [8744.] Married Female Deemed to be of Age, When.

All females married to a person of full age shall be deemed and taken to be of full age. [L. '54, p. 407, § 2; L. '63, p. 434, § 2; Cd. '81, § 2364; 1 H. C., § 1417.]

Cited in 82 Wash. 151; 109 Wash. 108.

The juvenile court law, section 1987-1, defining delinquent and dependent children under the age of eighteen years, makes the age, not minority, the control-

ling element, and applies to a girl under eighteen years of age married to a man of full age, notwithstanding this section: *Lundy, In re*, 82 Wash. 148, 143 Pac. 885, Ann. Cas. 1916E, 1007.

CHAPTER II.

DEEDS AND OTHER INSTRUMENTS AFFECTING REAL PROPERTY.

§ 10550. [8745.] Conveyances to be by Deed.

All conveyances of real estate or of any interest therein, and all contracts creating or evidencing any encumbrance upon real estate shall be by deed. [L. '54, p. 402, § 1; L. '60, p. 299, § 1; L. '63, p. 430, § 1; L. '73, p. 465, § 1; L. '77, p. 312, § 1; Cd. '81, § 2311; L. '86, p. 177, § 1; L. '88, p. 50, § 1; 1 H. C., § 1422.]

See notes to next section.

See *supra*, §§ 6892, 6893, community property.

See §§ 5824, 5825, frauds and fraudulent conveyances.

See *infra*, § 11098, real property defined for taxation.

See *infra*, §§ 11322, 11324, and notes, tax deeds.

See *infra*, § 11347, instruments transmitted by telegraph.

Cited in 1 Wash. 556; 6 Wash. 619; 7 Wash. 44; 10 Wash. 138, 156, 297; 14 Wash. 473; 17 Wash. 237; 30 Wash. 151; 36 Wash. 329, 332, 590; 34 Wash. 147; 45 Wash. 379; 48 Wash. 667; 51 Wash. 495; 57 Wash. 474; 59 Wash. 93; 60 Wash. 79; 69 Wash. 91; 72 Wash. 52; 75 Wash. 236, 614; 79 Wash. 122, 214, 340, 344; 80 Wash. 539; 91 Wash. 288; 97 Wash. 549; 98 Wash. 605; 99 Wash. 311; 101 Wash. 279; 104 Wash. 478; 110 Wash. 290, 291; 113 Wash. 462.

This section is modified by § 10618, providing that leases for less than one year may be in writing, without seal or acknowledgment: *Richards v. Redelsheimer*, 36 Wash. 325, 78 Pac. 934.

REAL PROPERTY AND ESTATES AND INTERESTS THEREIN: See *Remington's Digest*, *Frauds*, St. of, §§ 9—19.

§ 9. Creation of Estates or Interests in General: *Churchill v. Stephenson*, 14 Wash. 620, 45 Pac. 28; *Raymond v. Johnson*, 17 Wash. 232, 49 Pac. 492, 61 Am. St. Rep. 908; *Mack v. Mack*, 39 Wash. 190, 81 Pac. 707; *Herkenrath v. Ragley*,

59 Wash. 52, 109 Pac. 279; *Herrick v. Miller*, 69 Wash. 456, 125 Pac. 974; *Croup v. De Moss*, 78 Wash. 128, 138 Pac. 671; *Mason's Estate, In re*, 95 Wash. 564, 164 Pac. 205.

See, also, *Stewart v. Cadeau*, 109 Wash. 292, 186 Pac. 894.

An oral agreement to permit the grantor in an escrow deed to redeem within one year relates to real property and is within the statute: *O'Reilly v. Tillman*, 111 Wash. 594, 191 Pac. 866.

An oral agreement to convey an interest in land to an attorney in consideration of services is within the statute: *Martin v. Bateman*, 111 Wash. 634, 191 Pac. 759.

§ 10. In Consideration of Marriage: *Koontz v. Koontz*, 83 Wash. 180, 145 Pac. 201.

§ 11. Creation of Leases—In General: *Richards v. Redelsheimer*, 36 Wash. 325, 78 Pac. 934; *Watkins v. Balch*, 41 Wash. 310, 83 Pac. 321. 3 L. R. A. (N. S.) 852; *O'Connor v. Enos*, 56 Wash. 448, 105 Pac.

1039; *Anderson v. Frye & Bruhn*, 69 Wash. 89, 124 Pac. 499; *National Laundry Co. v. Mayer*, 79 Wash. 212, 140 Pac. 393; *Eriksen v. Manufacturers Distributing Co.*, 103 Wash. 159, 173 Pac. 1095. See, also, *Pappas v. General Market Co.*, 104 Wash. 116, 176 Pac. 25.

§ 12. — **Statutory Exceptions:** *Ward v. Hinckley*, 26 Wash. 539, 67 Pac. 220; *Richards v. Redelsheimer*, 36 Wash. 325, 78 Pac. 934.

§ 13. **Creation of Easements:** *Horr v. Hollis*, 20 Wash. 424, 55 Pac. 565. See, also, *Johnson v. Mt. Baker Park Presbyterian Church*, 113 Wash. 458, 194 Pac. 536.

§ 14. **Creation of Licenses:** *Kleeb v. Bard*, 7 Wash. 41, 34 Pac. 138; *Walla Walla Oil, Gas etc. Co. v. Vallentine*, 103 Wash. 359, 174 Pac. 980.

§ 15. **Assignment, Grant, or Surrender of Existing Estates, Interests, or Terms:** *Spinning v. Drake*, 4 Wash. 285, 30 Pac. 82, 31 Pac. 319; *Hart v. Pratt*, 19 Wash. 560, 53 Pac. 711; *American Sav. Bank & Trust Co. v. Mafridge*, 60 Wash. 180, 110 Pac. 1015; *Allen v. Mitchell*, 99 Wash. 305, 169 Pac. 826.

§ 16. **Contracts for Sale—In General:** *Lombard Inv. Co. v. Carter*, 7 Wash. 4, 34 Pac. 209, 38 Am. St. Rep. 861; *Chamberlain v. Abrams*, 36 Wash. 587, 79 Pac. 204; *McLeod v. Morrison & Eshelman*, 66 Wash. 683, 120 Pac. 528, 38 L. R. A. (N. S.) 783; *Reard v. Ephrata Orchard Homes Co.*, 78 Wash. 180, 138 Pac. 678; *Arbogast v. Johnson*, 80 Wash. 537, 141 Pac. 1140; *First National Bank of Kennewick v. Conway*, 87 Wash. 506, 151 Pac. 1129.

§ 17. — **Timber:** *Kleeb v. Bard*, 7 Wash. 41, 34 Pac. 138; *Thill v. Johnston*, 60 Wash. 393, 111 Pac. 225; *Somers Co. v. Pix*, 75 Wash. 233, 134 Pac. 932; *France v. Deep River Logging Co.*, 79 Wash. 336, 140 Pac. 361, Ann. Cas. 1916A, 238.

§ 18. — **Contracts to Devise:** *Swash v. Sharpstein*, 14 Wash. 426, 44 Pac. 862, 32 L. R. A. 796; *Edwall's Estate, In re*, 75 Wash. 391, 134 Pac. 1041; *McClanahan v. McClanahan*, 77 Wash. 138, 137 Pac. 479, Ann. Cas. 1915A, 461; *Trimble v. Donahey*, 96 Wash. 677, 165 Pac. 1051; *Velikanje v. Dickman*, 98 Wash. 584, 168 Pac. 465.

§ 19. — **Partnership Contracts and Lands:** *Case v. Seger*, 4 Wash. 492, 30 Pac. 646; *Brewer v. Cropp*, 10 Wash. 136, 38 Pac. 866; *Smith v. Imhoff*, 89 Wash. 418, 154 Pac. 793.

REQUISITES AND SUFFICIENCY OF WRITING: See *Remington's Digest*, Frds., St. of, §§ 28—38.

§ 28. **Creation or Conveyance of Estates or Interests in Real Property—**

Nature and Form of Instrument: *Manning v. Foster*, 49 Wash. 541, 96 Pac. 233, 126 Am. St. Rep. 876, 16 Ann. Cas. 95, 18 L. R. A. (N. S.) 337.

§ 29. — **Signature by Agent:** *Degginger v. Martin*, 48 Wash. 1, 92 Pac. 674.

§ 30. **Nature and Form of Memorandum in General:** *Underwood v. Stack*, 15 Wash. 497, 46 Pac. 1031; *Service v. Deming Investment Co.*, 20 Wash. 668, 56 Pac. 837; *Ward v. Hinckley*, 26 Wash. 539, 67 Pac. 220; *Anderson v. Wallace Lumber & Mfg. Co.*, 30 Wash. 147, 70 Pac. 247; *Chamberlain v. Abrams*, 36 Wash. 587, 79 Pac. 204; *Bronx Inv. Co. v. National Bank of Commerce*, 47 Wash. 566, 92 Pac. 380; *Edwall's Estate, In re*, 75 Wash. 391, 134 Pac. 1041; *Ginnett v. Greene*, 87 Wash. 40, 151 Pac. 99; *McLain v. Healy*, 98 Wash. 489, 168 Pac. 1, L. R. A. 1918A, 1161.

§ 31. **Contents of Memorandum—In General:** *Lombard Inv. Co. v. Carter*, 7 Wash. 4, 34 Pac. 209, 38 Am. St. Rep. 861; *Western Timber Co. v. Kalama River L. Co.*, 42 Wash. 620, 85 Pac. 338, 114 Am. St. Rep. 137, 7 Ann. Cas. 667, 6 L. R. A. (N. S.) 397; *Campbell v. Weston Basket & Barrell Co.*, 87 Wash. 73, 151 Pac. 103.

§ 36. — **Statement of Price:** *Sayward v. Gardner*, 5 Wash. 247, 31 Pac. 761, 33 Pac. 389; *Lombard Inv. Co. v. Carter*, 7 Wash. 4, 34 Pac. 209, 38 Am. St. Rep. 861.

§ 38. **Signature of Memorandum:** *Carsens v. McReavy*, 1 Wash. 359, 25 Pac. 471; *Tingley v. Bellingham Bay etc. Co.*, 5 Wash. 644, 32 Pac. 737, 33 Pac. 1055; *Monfort v. McDonough*, 20 Wash. 710, 54 Pac. 1121; *Horr v. Hollis*, 20 Wash. 424, 55 Pac. 565; *Arbogast v. Johnson*, 80 Wash. 537, 141 Pac. 1140.

See, also, *Wright v. Seattle Grocery Co.*, 105 Wash. 383, 177 Pac. 818.

OPERATION AND EFFECT OF STATUTE: See *Remington's Digest*, Frds., St. of, §§ 40—54.

§ 40. **Operation as Tenancy from Year to Year or at Will, of Estate or Interest Created Without Writing:** *Richards v. Redelsheimer*, 36 Wash. 325, 78 Pac. 934.

§ 41. **Validity and Enforcement of Contracts in General:** *Sayward v. Gardner*, 5 Wash. 247, 31 Pac. 761, 33 Pac. 389; *Anderson v. Schneider*, 22 Wash. 363, 60 Pac. 1125; *Parkes' Estate, In re*, 101 Wash. 659, 172 Pac. 908.

§ 42. **Part Performance in General:** *Horr v. Hollis*, 20 Wash. 424, 55 Pac. 565; *Browder v. Phinney*, 37 Wash. 70, 79 Pac. 598; *Jonsland v. Wallace*, 39 Wash. 487, 81 Pac. 1094; *Federal Iron & Brass Bed Co. v. Hock*, 42 Wash. 668, 85 Pac. 418; *Peterson v. Hicks*, 43 Wash.

412, 86 Pac. 634; Johnson v. Upper, 38 Wash. 693, 80 Pac. 801; National Laundry Co. v. Mayer, 79 Wash. 212, 140 Pac. 393; Hughes v. Eastern R. & Lumber Co., 93 Wash. 558, 161 Pac. 343; Woolen v. Sloan, 94 Wash. 551, 162 Pac. 985.

§ 43. Contracts in Part Within Statute: Swash v. Sharpstein, 14 Wash. 426, 44 Pac. 862, 32 L. R. A. 796.

Trade of real and personal property is within the statute: Peterson v. Nichols, 110 Wash. 288, 188 Pac. 498.

§ 44. Modification of Contract: Tingley v. Fairhaven Land Co., 9 Wash. 34, 36 Pac. 1098; Sedro Vencer Co. v. Kwapil, 62 Wash. 385, 113 Pac. 1100; Oregon & Wash. R. Co. v. Elliott Bay Mill & Lumber Co., 70 Wash. 148, 126 Pac. 406; Gerard-Fillio Co. v. McNair, 68 Wash. 321, 123 Pac. 462; Schulze v. Buckeye Lumber Co., 94 Wash. 520, 162 Pac. 588; Woolen v. Sloan, 94 Wash. 551, 162 Pac. 985.

A written contract may be modified by an executed oral contract: Clements v. Cook, 112 Wash. 217, 191 Pac. 874.

§ 45. Contracts Performed Only as to Part not Within Statute—Agreements not to be Performed Within One Year: Borrow v. Borrow, 34 Wash. 684, 76 Pac. 305.

§ 46. Agreements Relating to Real Property: Graves v. Smith, 7 Wash. 14, 34 Pac. 213; Collins v. Fidelity Trust Co., 33 Wash. 136, 73 Pac. 1121; Lee v. Wrixon, 37 Wash. 47, 79 Pac. 489; Case v. Perrigo, 47 Wash. 675, 92 Pac. 432; Edwall's Estate, In re, 75 Wash. 391, 134 Pac. 1041; McClanahan v. McClanahan, 77 Wash. 138, 137 Pac. 479, Ann. Cas. 1915A, 461; Miller & Sons v. Hanberg, 79 Wash. 144, 139 Pac. 1085; McLain v. Healy, 98 Wash. 489, 168 Pac. 1; Trimble v. Donahey, 96 Wash. 677, 165 Pac. 1051; Worden v. Worden, 96 Wash. 592, 165 Pac. 501; Nelson v. Davis, 102 Wash. 313, 172 Pac. 1178.

An oral promise to make a gift of land, when specifically enforced: Raymond v. Hattrick, 104 Wash. 619, 177 Pac. 640.

§ 47. — Payment as Part Performance: Chamberlain v. Abrams, 36 Wash. 587, 79 Pac. 204; Thill v. Johnston, 60 Wash. 393, 111 Pac. 225.

§ 48. — Possession and Payment: Rochester v. Yesler's Estate, 6 Wash. 114, 32 Pac. 1057; Johnson v. Puget Mill Co., 28 Wash. 515, 68 Pac. 867; Sherlock v. Van Asselt, 34 Wash. 141, 75 Pac. 639; McKay v. Calderwood, 37 Wash. 194, 79 Pac. 629; Blakely v. Sumner, 62 Wash. 206, 113 Pac. 257.

§ 49. — Improvements With Payment or Possession: Mudgett v. Clay, 5 Wash. 103, 31 Pac. 424; Peck v. Stanfield,

12 Wash. 101, 40 Pac. 635; Borrow v. Borrow, 34 Wash. 684, 76 Pac. 305; Riverside Land Co. v. Pietsch, 35 Wash. 210, 77 Pac. 195; McKay v. Calderwood, 37 Wash. 194, 79 Pac. 629; O'Connor v. Oliver, 45 Wash. 549, 88 Pac. 1025; Broadway Hospital and Sanitarium v. Decker, 47 Wash. 586, 92 Pac. 445; Northcraft v. Blumauer, 53 Wash. 243, 101 Pac. 871, 132 Am. St. Rep. 1071; O'Connor v. Enos, 56 Wash. 448, 105 Pac. 1039; Koschnitzky v. Hammond Lumber Co., 57 Wash. 320, 106 Pac. 900; Forrester v. Reliable Transfer Co., 59 Wash. 86, 109 Pac. 312, Ann. Cas. 1912A, 1093; Bendon v. Parfit, 74 Wash. 645, 134 Pac. 185; Grubb v. House, 93 Wash. 200, 160 Pac. 421.

§ 50. Contracts Implied by Law on Part Performance: Kennedy v. Anderson, 49 Wash. 14, 94 Pac. 661.

§ 51. Contracts Completely Performed: Grippen v. Benham, 5 Wash. 589, 32 Pac. 555; Mounts v. Goranson, 29 Wash. 261, 69 Pac. 740; Keith v. Smith, 46 Wash. 131, 89 Pac. 473, 13 Ann. Cas. 975; Briggs v. Bounds, 48 Wash. 579, 94 Pac. 101; Bay View Land Co. v. Ferguson, 53 Wash. 323, 101 Pac. 1093; Cushing v. Monarch Timber Co., 75 Wash. 678, 135 Pac. 660, Ann. Cas. 1914C, 1239; James v. Lueders, 97 Wash. 560, 166 Pac. 772; McKay v. Meyer, 103 Wash. 270, 174 Pac. 13.

Sufficient performance of an unacknowledged lease to make it inequitable to cancel the lease: Zinn v. Knopes, 111 Wash. 606, 191 Pac. 822.

§ 52. Contracts as Ground for Equitable Relief: O'Connor v. Jackson, 23 Wash. 224, 62 Pac. 761; Mead v. White, 53 Wash. 638, 102 Pac. 753, 132 Am. St. Rep. 1092, 23 L. R. A. (N. S.) 1197.

§ 53. Persons to Whom Statute is Available: Carmack v. Drum, 32 Wash. 236, 73 Pac. 377, 785; Backus v. Feeks, 71 Wash. 508, 129 Pac. 86, Ann. Cas. 1914C, 553; Trimble v. Donahey, 96 Wash. 677, 165 Pac. 1051.

§ 54. Waiver of Bar of Statute—As Ground of Defense: Storseth v. Folsom, 45 Wash. 374, 88 Pac. 632; Matzger v. Arcade Building & Realty Co., 80 Wash. 401, 141 Pac. 900, L. R. A. 1915A, 288.

See, also, Zinn v. Knopes, 111 Wash. 606, 191 Pac. 822.

Pleading Statute as Defense: See Remington's Digest, Frauds, St., of, § 57; Browder v. Phinney, 37 Wash. 70, 79 Pac. 598; Moses Land Scrip & Realty Co. v. Stack-Gibbs Lumber Co., 56 Wash. 529, 106 Pac. 207; Taylor v. Howard, 70 Wash. 217, 126 Pac. 423; Seattle Taxicab & Transfer Co. v. Kinney, 74 Wash. 179, 132 Pac. 1013; Cushing v. Monarch Timber Co., 75 Wash. 678, 135 Pac. 660, Ann. Cas. 1914C,

1239; *Thompson v. English*, 76 Wash. 23, 135 Pac. 664; *Goodrich v. Rogers*, 75 Wash. 212, 134 Pac. 947; *Arbogast v. Johnson*, 80 Wash. 537, 141 Pac. 1140; *First Nat. Bank v. Geske & Co.*, 85 Wash. 477, 148 Pac. 593, Ann. Cas. 1917B, 564; *Brown v. Kausche*, 98 Wash. 470, 167 Pac. 1075.

§ 10551. [8746.] Requisites of a Deed.

All deeds and voluntary transfers of real estate or any interest therein shall be in writing, signed by the party bound thereby, and acknowledged by the party making it before some person authorized by the laws of this state to take acknowledgments of deeds: Provided, that when such real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by indorsement on the back of such certificates or evidence of interest or delivery thereof to the vendee, such transfer shall be valid: And, provided further, that all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [L. '15, p. 546, § 1; Cf. L. '54, p. 402; Cd. '81, § 2312; L. '86, p. 177, § 2; L. '88, p. 50, § 2; 1 H. C., § 1423.]

See references to last section.

See notes to § 1116, deeds construed as mortgages.

See supra, § 1260, copies of recorded instruments as evidence.

See supra, § 1397 et seq., wills.

See supra, § 1558, and notes, specific performance of decedents' contracts.

See supra, § 5824 et seq., statute of frauds.

See infra, § 10556, private seals abolished.

See infra, § 10569, confirmation of sheriff's deeds in certain cases.

See note to § 10596, recording, when equivalent to delivery.

Cited in 30 Wash. 151; 36 Wash. 329, 332, 590; 59 Wash. 93; 60 Wash. 79; 64 Wash. 65, 67; 69 Wash. 91; 75 Wash. 236, 614; 79 Wash. 216, 340, 344; 80 Wash. 539; 97 Wash. 549.

NATURE AND ESSENTIALS OF CONVEYANCES IN GENERAL: See Remington's Digest, Deeds, §§ 1—5.

§ 1. **Conveyances Distinguished from Executory Contracts:** *Glasford v. Baker*, 1 W. T. 224.

§ 2. **Property Which may be Subject of Conveyance:** *Brewer v. Cropp*, 10 Wash. 136, 38 Pac. 866; *Howard v. Shaw*, 10 Wash. 151, 38 Pac. 746.

§ 3. **Parties—Capacity to Take:** *McInerney v. Beck*, 10 Wash. 515, 39 Pac. 130; *Oregon Mortgage Co. v. Carstens*, 16 Wash. 165, 47 Pac. 421, 35 L. R. A. 841; *Goon Gan v. Richardson*, 16 Wash. 373, 47 Pac. 762.

§ 4. **Consideration—Sufficiency:** *Prignon v. Daussat*, 4 Wash. 199, 29 Pac. 1046, 31 Am. St. Rep. 914; *Marsh v. Marsh*, 32 Wash. 623, 73 Pac. 676; *Powers v. Mun-*

son, 74 Wash. 234, 133 Pac. 453; *James v. Lueders*, 97 Wash. 560, 166 Pac. 772.

§ 4-1. — **Effect of Seal:** *Golle v. State Bank of Wilson Creek*, 52 Wash. 437, 100 Pac. 984.

§ 5. — **Failure of Consideration:** *Payette v. Ferrier*, 20 Wash. 479, 55 Pac. 629; *Hayward v. Tacoma Savings Bank & Trust Co.*, 88 Wash. 542, 153 Pac. 352.

FORM AND CONTENTS OF INSTRUMENTS: See Remington's Digest, Deeds, §§ 6—10.

§ 6. **Necessity and Sufficiency of Writing in General:** *Kleeb v. Bard*, 7 Wash. 41, 34 Pac. 138.

§ 7. **Necessity and Sufficiency of Instrument Under Seal:** *Edson v. Knox*, 8 Wash. 642, 36 Pac. 698; *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116.

§ 8. **Statutory Forms:** *Blood v. Sielert*, 38 Wash. 643, 80 Pac. 799.

§ 9. **Designation and Description of Parties:** *Chapman v. Tyson*, 39 Wash.

523, 81 Pac. 1066; *Chrast v. O'Connor*, 41 Wash. 360, 83 Pac. 238.

§ 10. Description of Property — Certainty in General: *Shockley v. Brown*, 1 W. T. 463; *Carson v. Railsback*, 3 W. T. 168, 13 Pac. 618; *Langert v. Ross*, 1 Wash. 250, 24 Pac. 443; *Hartigan v. Hoffman*, 16 Wash. 34, 47 Pac. 217; *Sengfelder v. Hill*, 21 Wash. 371, 58 Pac. 250; *Schmidt v. Olympia Light Co.*, 40 Wash. 131, 82 Pac. 184; *Sylvester v. State*, 46 Wash. 585, 91 Pac. 15; *Wetzler v. Nichols*, 53 Wash. 285, 101 Pac. 867, 132 Am. St. Rep. 1075; *Brodsky v. Nelson*, 57 Wash. 671, 107 Pac. 840.

EXECUTION: See *Remington's Digest*, Deeds, §§ 11—14.

§ 11. Witnesses: *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116.

§ 12. Acknowledgment: *Mann v. Young*, 1 W. T. 454; *Edson v. Knox*, 8 Wash. 642, 36 Pac. 698; *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116; *Blewett v. Bash*, 22 Wash. 536, 61 Pac. 770; *Matson v. Johnson*, 48 Wash. 256, 93 Pac. 324, 125 Am. St. Rep. 924.

§ 13. Execution in Blank: *Duggar v. Dempsey*, 13 Wash. 396, 43 Pac. 357; *Clemmons v. McGeer*, 63 Wash. 446, 115 Pac. 1081.

§ 14. Curative Statutes: *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116.

DELIVERY: See *Remington's Digest*, Deeds, §§ 15—21.

§ 15. Necessity: *Nichols v. Opperman*, 6 Wash. 618, 34 Pac. 162; *Meikle v. Cloquet*, 44 Wash. 513, 87 Pac. 841; *Matson v. Johnson*, 48 Wash. 256, 93 Pac. 324, 125 Am. St. Rep. 924.

To be valid, a deed by a testator to a devisee must have been delivered in his lifetime; and passes title to the estate at the date of delivery, leaving nothing for the will to operate upon: *White v. Chellew*, 108 Wash. 526, 185 Pac. 619.

§ 16. Sufficiency—In General: *Richmond v. Morford*, 4 Wash. 337, 30 Pac. 241, 31 Pac. 513; *Coe v. Wormell*, 88 Wash. 119, 152 Pac. 716.

Where deeds of a husband and wife, tendered and filed in court, were, at all times pending an appeal by the adverse parties, subject to recall on abandonment of the controversy, they became ineffectual for any purpose as to the wife's interest upon her death before termination of the suit: *Gordon v. Hillman*, 109 Wash. 223, 186 Pac. 651.

§ 17. — Delivery to Third Person: *Healy v. Seward*, 5 Wash. 319, 31 Pac. 874; *Bender v. Ragan*, 53 Wash. 521, 102 Pac. 427; *Simmons v. Macomber*, 60 Wash. 469, 111 Pac. 579; *Rhines v. Young*, 97 Wash. 437, 166 Pac. 642.

Sufficient delivery to an escrow is not shown if the grantor had control and no present intent to part with title: *Bloor v. Bloor*, 105 Wash. 110, 177 Pac. 722.

§ 17-1. — Deposit for Delivery on Death of Grantor: *Maxwell v. Harper*, 51 Wash. 351, 98 Pac. 756; *Eves v. Roberts*, 96 Wash. 99, 164 Pac. 915; *James v. Lueders*, 97 Wash. 560, 166 Pac. 772.

Simultaneous deeds by husband and wife to each other, placed in escrow, to be delivered to the survivor, take effect presently, if at all, and negative each other, and are not effectively delivered: *Bloor v. Bloor*, 105 Wash. 110, 177 Pac. 722.

Where a deed and will of the same property were made in extremis one day before the grantor's death, and it is evident no reservation was made, an immediate delivery of the deed was intended where the grantor stated they were all right and left them with the scrivener without directions as to delivery: *White v. Chellew*, 108 Wash. 628, 185 Pac. 621.

§ 18. — Record or Delivery for Record: *Prignon v. Daussat*, 4 Wash. 199, 29 Pac. 1046, 31 Am. St. Rep. 914; *Bjmerland v. Eley*, 15 Wash. 101, 45 Pac. 730; *Kellogg v. Cook*, 18 Wash. 516, 52 Pac. 233.

§ 19. — Conditional Delivery: *Richmond v. Morford*, 4 Wash. 337, 30 Pac. 241, 31 Pac. 513.

§ 19-1. Ratification of Unauthorized or Defective Delivery: *Petticrew v. Green-shields*, 61 Wash. 614, 112 Pac. 749.

§ 20. Acceptance: *Bullene v. Garrison*, 1 W. T. 587; *Cogswell v. Cogswell*, 70 Wash. 178, 126 Pac. 431.

§ 21. Operation and Effect: *Moore v. Walla Walla*, 2 W. T. 184, 2 Pac. 187; *Davis v. Lee*, 52 Wash. 330, 100 Pac. 752, 132 Am. St. Rep. 973.

VALIDITY: See *Remington's Digest*, Deeds, §§ 21—21-3.

§ 21-1. Capacity and Assent of Parties in General: *Jackson v. Lamar*, 58 Wash. 383, 108 Pac. 946.

A finding of mental capacity on the part of a woman aged eighty to execute a deed to her daughter, with whom she had made her home for years, is sustained, although relatives testified she was childish, where disinterested witnesses testified to facts showing more than ordinary mental capacity for one of her age: *Parr v. Campbell*, 109 Wash. 376, 186 Pac. 858.

A finding that a woman eighty years of age was not unduly influenced by her daughter with whom she had resided for years, to execute a deed to her, is sus-

tained by evidence of her sense of obligation to her daughter and repeated expressions of her intent to compensate her; it not being undue influence for a daughter to persuade or solicit her mother to make a conveyance, so long as she was not overborne or rendered incapable of acting upon her own motives: *Parr v. Campbell*, 109 Wash. 376, 186 Pac. 858.

§ 21-2. **Mistake:** *Town v. Greer*, 53 Wash. 350, 102 Pac. 239.

§ 21-3. **Fictitious Names:** *Farmers & Mechanics' Bank v. Western Loan & Bldg. Co.*, 103 Wash. 349, 174 Pac. 1.

CONSTRUCTION AND OPERATION—GENERAL RULES OF CONSTRUCTION: See *Remington's Digest, Deeds*, §§ 25-1—31.

§ 25-1. **Application to Deeds in General:** *Golden v. Pilchuck Tribe No. 42, Improved Order of Red Men*, 71 Wash. 581, 129 Pac. 93.

In ascertaining the intent of a deed some meaning should be given to every expression, if it can reasonably be done, not inconsistent with the general intent, and if ambiguous, the construction given by the parties may be considered: *Gold Bar v. Gold Bar Lumber Co.*, 109 Wash. 391, 186 Pac. 896.

§ 26. **Language of Instrument:** *Blood v. Sielert*, 38 Wash. 643, 80 Pac. 799; *Tacoma Mill Co. v. Northern Pac. R. Co.*, 89 Wash. 187, 154 Pac. 173; *Brown v. Davis*, 98 Wash. 442, 167 Pac. 1095.

§ 27. **Recitals:** *Bingham v. Walla Walla*, 3 W. T. 68, 13 Pac. 408; *Goodfellow v. Le May*, 15 Wash. 684, 47 Pac. 25; *Marvin v. Yates*, 26 Wash. 50, 66 Pac. 131; *Lohse v. Burch*, 42 Wash. 156, 84 Pac. 722.

§ 28. **Extrinsic Circumstances:** *Carson v. Railsback*, 3 W. T. 168, 13 Pac. 618; *Biles v. Tacoma etc. R. Co.*, 5 Wash. 509, 32 Pac. 211; *Singfelder v. Hill*, 21 Wash. 371, 58 Pac. 250.

§ 29. **Construction as to Parties—Grantees:** *Chapman v. Tyson*, 39 Wash. 523, 81 Pac. 1066.

§ 30. **Time of Execution:** *Skellinger v. Smith*, 1 W. T. 369.

§ 31. **Evidence to Aid Construction in General:** *Maxwell v. Harper*, 51 Wash. 351, 98 Pac. 756; *Brown v. Bremerton*, 69 Wash. 474, 125 Pac. 785.

PROPERTY CONVEYED: See *Remington's Digest, Deeds*, §§ 32—38.

§ 32. **Reference to Maps, Plats, or Other Instruments:** *Kenyon v. Knipe*, 2 Wash. 394, 27 Pac. 227, 13 L. R. A. 142; *State ex rel. Battersby v. Board of Tide Land Appraisers*, 5 Wash. 425, 32 Pac. 97, 775; *Hutcheaft v. Ludwig*, 13 Wash. 240, 43 Pac. 29.

§ 33. **Particular Words or Terms:** *Columbia & Puget Sound R. Co. v. Seattle*, 33 Wash. 513, 74 Pac. 670; *Golden v. Pilchuck Tribe No. 42 Improved Order of Red Men*, 71 Wash. 581, 129 Pac. 93; overruled in *Golden v. Pilchuck Tribe No. 42 Improved Order of Red Men*, 76 Wash. 66, 135 Pac. 819; *Frerich v. Abrams*, 97 Wash. 460, 166 Pac. 792.

§ 34. **Particular Descriptions:** *Owen v. Henderson*, 16 Wash. 39, 47 Pac. 215, 58 Am. St. Rep. 17; *Maynard v. Puget Sound Nat. Bank*, 24 Wash. 455, 64 Pac. 754; *Brown v. Bremerton*, 69 Wash. 474, 125 Pac. 785; *Worden v. Worden*, 96 Wash. 592, 165 Pac. 501.

A water deed of "the right of way and pipe-line or gravity system" of the grantor within the corporate limits of a city does not include service pipes outside the city limits, used by the grantor in connection with its mill; "or gravity system" being merely synonymous with right of way and pipe-line within the city, especially where the parties had so construed the deed: *Gold Bar v. Gold Bar Lumber Co.*, 109 Wash. 391, 186 Pac. 896.

§ 35. **Erroneous Description:** *Edson v. Knox*, 8 Wash. 642, 36 Pac. 698; *Peabody v. Nicklin*, 8 Wash. 660, 36 Pac. 700; *Isensee v. Peabody*, 8 Wash. 660, 36 Pac. 700.

§ 37. **Appurtenances:** *Brown v. Careek*, 14 Wash. 443, 44 Pac. 887; *Book v. West*, 29 Wash. 70, 69 Pac. 630; *Murray v. Briggs*, 29 Wash. 245, 69 Pac. 765.

Sewage and water systems as an appurtenance: *Hurley v. Liberty Lake Co.*, 112 Wash. 207, 192 Pac. 4.

§ 38. **Evidence:** *Squire v. Greer*, 2 Wash. 209, 26 Pac. 222; *Cook v. Hensler*, 57 Wash. 392, 107 Pac. 178; *Robinson v. Taylor*, 68 Wash. 351, 123 Pac. 444, Ann. Cas. 1913E, 1011.

ESTATES AND INTERESTS CREATED: See *Remington's Digest, Deeds*, §§ 39—43.

§ 39. **Creation by Deed in General:** *Wilson v. Morrell*, 5 Wash. 654, 32 Pac. 733; *Northern Pac. R. Co. v. Smith*, 68 Wash. 269, 122 Pac. 1057.

§ 40. **Operation of Quitclaim Deed:** *Ankeny v. Clark*, 1 Wash. 549, 20 Pac. 583; *McInerney v. Beck*, 10 Wash. 515, 39 Pac. 130; *Chamberlain v. Abrams*, 36 Wash. 587, 79 Pac. 204.

§ 41. **Operation of Deed in Representative Capacity:** *Wilson v. Morrell*, 5 Wash. 654, 32 Pac. 733.

§ 42. **Fee Simple:** *Reichenbach v. Washington Short Line R.*, 10 Wash. 357, 38 Pac. 1126; *Thompson v. Price*, 37 Wash. 394, 79 Pac. 951.

§ 42-1. **Conditional Fees:** Aumiller v. Dash, 51 Wash. 520, 99 Pac. 583.

§ 43. **Reversions:** Jenkins v. Jenkins University, 17 Wash. 160, 49 Pac. 247, 50 Pac. 785; Pacific Iron Works v. Bryant Lumber & Shingle Mill Co., 60 Wash. 502, 111 Pac. 578.

EXCEPTIONS AND RESERVATIONS: See Remington's Digest, Deeds, §§ 44—46-1.

§ 44. **In General:** Biles v. Tacoma etc. R. Co., 5 Wash. 509, 32 Pac. 211.

§ 45. **Construction and Operation of Exceptions:** Hughes v. South Bay School District, 32 Wash. 678, 73 Pac. 778; Delano v. Luedinghaus, 70 Wash. 573, 127 Pac. 197; Studebaker v. Beek, 83 Wash. 260, 145 Pac. 225; Simmons v. Northern Pac. R. Co., 88 Wash. 384, 153 Pac. 321, 155 Pac. 1039, Ann. Cas. 1918C, 1184.

In a water deed, conveying a right of way across a school section, an exception of the school section from the warranty clause does not operate to exclude things not contained within the description actually sold: Gold Bar v. Gold Bar Lumber Co., 109 Wash. 391, 186 Pac. 896.

§ 46. **Nature and Creation of Reservations:** Biles v. Tacoma etc. R. Co., 5 Wash. 509, 32 Pac. 211.

§ 46-1. **Construction and Operation of Reservations:** Schmidt v. Olympia Light & Power Co., 46 Wash. 360, 90 Pac. 212; Aumiller v. Dash, 51 Wash. 520, 99 Pac. 583; Campbell Lumber Co. v. Deep River Logging Co., 71 Wash. 70, 127 Pac. 566.

CONDITIONS AND RESTRICTIONS: See Remington's Digest, Deeds, §§ 47—51.

§ 47. **Construction and Operation of Conditions Subsequent:** Reichenbach v. Washington etc. R. Co., 10 Wash. 357, 38 Pac. 1126; Mills v. Seattle & M. R. Co., 10 Wash. 520, 39 Pac. 246; Mouat v. Seattle etc. R. Co., 16 Wash. 84, 47 Pac. 233; Knapp v. Crawford, 16 Wash. 524, 48 Pac. 261; Jones v. Williams, 56 Wash. 588, 106 Pac. 166.

§ 47-1. — **Conditions Precedent:** Jones-Thompson Inv. Co. v. Cascade Steel Foundry Co., 59 Wash. 601, 110 Pac. 417.

§ 48. **Performance or Breach—In General:** Mills v. Seattle & Mont. R. Co., 10 Wash. 520, 39 Pac. 246; Aumiller v. Dash, 51 Wash. 520, 99 Pac. 583.

§ 49. — **Time for Performance:** McCue v. Bellingham Bay Water Co., 5 Wash. 156, 31 Pac. 461; Mouat v. Seattle etc. R. Co., 16 Wash. 84, 47 Pac. 233; Everett Water Co. v. Powers, 37 Wash. 143, 79 Pac. 617.

§ 50. **Waiver of Condition or of Forfeiture for Breach:** Lewiston Water etc. Co. v. Brown, 42 Wash. 555, 85 Pac. 47.

§ 51. **Enforcement of Forfeiture:** Butts v. Robson, 5 Wash. 268, 31 Pac. 760; Mills v. Seattle & M. R. Co., 10 Wash. 520, 39 Pac. 246.

EVIDENCE: See Remington's Digest, Deeds, §§ 52—63.

§ 52. **Presumptions and Burden of Proof—Execution, Existence and Identity:** Chapman v. Tyson, 39 Wash. 523, 81 Pac. 1066; Bluett v. Wilce, 43 Wash. 492, 86 Pac. 853.

§ 54. — **Delivery:** Richmond v. Morford, 4 Wash. 337, 30 Pac. 241, 31 Pac. 513; Jackson v. Lamar, 58 Wash. 383, 108 Pac. 946; State v. Dana, 59 Wash. 30, 109 Pac. 191; Anderson v. Woolley, 61 Wash. 236, 112 Pac. 271.

§ 55. — **Consideration:** White v. Johnson, 4 Wash. 113, 29 Pac. 932; Nixon v. Post, 13 Wash. 181, 43 Pac. 23; Van Lehn v. Morse, 16 Wash. 219, 47 Pac. 435.

§ 56. — **Validity:** Jackson v. Tatebo, 3 Wash. 456, 28 Pac. 916; Truitt v. Truitt, 100 Wash. 608, 171 Pac. 532.

§ 57. **Admissibility of Evidence—In General:** Hubenthal v. Spokane etc. R. Co., 43 Wash. 677, 86 Pac. 955.

§ 58. — **Execution, Existence and Identity:** Langert v. Ross, 1 Wash. 250, 24 Pac. 443; Sengfelder v. Hill, 21 Wash. 371, 58 Pac. 250; Newman v. Buzard, 24 Wash. 225, 64 Pac. 139; Gardner v. Port Blakely Mill Co., 8 Wash. 1, 35 Pac. 402; Owen v. Henderson, 16 Wash. 39, 47 Pac. 215, 58 Am. St. Rep. 17; Cook v. Hensler, 57 Wash. 392, 107 Pac. 178.

§ 59. — **Record or Registration:** Skellinger v. Smith, 1 W. T. 369.

§ 60. **Weight and Sufficiency of Evidence—Execution, Existence and Identity:** Nixon v. Post, 13 Wash. 181, 43 Pac. 23; Dugfar v. Dempsey, 13 Wash. 396, 43 Pac. 357; Thompson v. Schoner, 58 Wash. 642, 109 Pac. 116; O'Brien v. McKelvey, 66 Wash. 18, 118 Pac. 885.

§ 61. — **Delivery:** Bjmerland v. Eley, 15 Wash. 101, 45 Pac. 730; Atwood v. Atwood, 15 Wash. 285, 46 Pac. 240; Thatcher v. Capeca, 76 Wash. 249, 134 Pac. 923; Showalter v. Spangle, 93 Wash. 326, 160 Pac. 1042.

§ 62. — **Consideration:** Hewett v. Dole, 69 Wash. 163, 124 Pac. 374.

§ 63. — **Validity:** Spackman v. Webb, 63 Wash. 5, 114 Pac. 877.

Undue Influence—Evidence—Sufficiency—Mental Capacity: Parr v. Campbell, 109 Wash. 376, 186 Pac. 858.

See, also, Remington's Digest, Cancellation of Inst., § 102, and cases cited.

§ 10552. [8747.] Warranty Deed, Form and Effect of.

Warranty deeds for the conveyance of land may be substantially in the following form:—

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration), in hand paid, convey and warrant to (here insert the grantee's name or names) the following described real estate (here insert description), situate in the county of —, state of Washington.

Dated this — day of —, 18—. — —. (Seal)

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantee:

1. That at the time of the making and delivery of such deed he was lawfully seised of an indefeasible estate in fee simple in and to the premises therein described, and had good right and full power to convey the same;

2. That the same were then free from all encumbrances; and

3. That he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same; and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [L. '86, p. 177, § 3; 1 H. C., § 1427.]

The use of private seals on deeds, etc., has been abolished by § 10556.

Cited in 6 Wash. 248; 49 Wash. 63; 57 Wash. 64; 60 Wash. 538; 99 Wash. 229.

Covenants of Warranty in General:
See Remington's Digest, Covenants, § 11, and cases cited.

In view of this section as to fee-simple title, plaintiff's title is sufficiently shown by a warranty deed, without having disclaimed her title, where the defendants claimed under a common source through a void tax foreclosure naming the plaintiff

as owner: Darrin v. Humes, 60 Wash. 537, 111 Pac. 767.

While, by virtue of the statute, certain covenants are implied from the use of the word "warrant" in a deed, they are to be implied only when no others are expressed; and not where the deed sets out the particular things warranted against: Leddy v. Emos, 6 Wash. 247, 33 Pac. 508, 34 Pac. 665.

§ 10553. [8748.] Bargain and Sale Deed, Form and Effect of.

Bargain and sale deeds for the conveyance of land may be substantially in the following form:—

The grantor (here insert name or names and place of residence), for [and] in consideration of (here insert consideration), in hand paid, bargain, sell, and convey to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of —, state of Washington.

Dated this — day of —, 18—. — —. (Seal.)

Every deed in substance in the above form shall convey to the grantee, his heirs or other legal representatives, an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or other legal representatives, to wit, that any grantor was seized of an indefeasible estate in fee simple, free from encumbrance,

done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators, and assigns, may, in any action, recover for breaches, as if such covenants were expressly inserted. [L. '86, p. 178, § 4; 1 H. C., § 1425.]

Cited in 36 Wash. 644—646; 49 Wash. 63; 64 Wash. 63.

A deed of standing timber using the words "has granted, bargained and sold" is a substantial compliance with the statutory form prescribed by this section, and under it the covenants of seisin and warranty are implied: *Blood v. Sielert*, 38 Wash. 643, 80 Pac. 799.

An after-acquired title of mortgagors inures to the benefit of the mortgagee,

although the mortgage contained no express words of warranty, where it did contain a granting clause, which, under this section, would in a deed constitute a covenant of seisin and for quiet enjoyment, sufficient to pass to a grantee an after-acquired title under section 10571; since the same rule applies as between mortgagor and mortgagee: *American Sav. Bank & Trust Co. v. Helgesen*, 64 Wash. 54, 116 Pac. 837, Ann. Cas. 1913A, 390.

§ 10554. [8749.] Quitclaim Deed, Form and Effect of.

Quitclaim deeds may be in substance in the following form:—

The grantor (here insert name or names and place of residences), for the consideration (here insert consideration), convey and quitclaim to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of —, state of Washington.

Dated this — day of —, 18—. — —. (Seal.)

Every deed in substance in form prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release, and quitclaim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor in the premises therein described, but shall not extend to the after-acquired title unless words are added expressing such intention. [L. '86, p. 178, § 5; 1 H. C., § 1426.]

Cited in 31 Wash. 443; 36 Wash. 592.

Under this section and section 10571, a quitclaim deed is sufficient to convey the after-acquired title of the grantor when it recites that it remises, releases and quitclaims to the grantee certain lands, "to have and to hold, all and

singular the said described premises, together with the appurtenances unto the said party of the second part and to his heirs and assigns forever": *West Seattle Land etc. Co. v. Novelty M. Co.*, 31 Wash. 435, 72 Pac. 69.

§ 10555. [8750.] Mortgages, Form and Effect of.

Mortgages of land may be in the following form, substantially:—

The mortgagor (here insert name or names) mortgages to (here insert name or names of mortgagee or mortgagees) to secure the payment of (here recite the nature and amount of indebtedness, showing when due, rate of interest, and whether secured by note or not) the following described real estate (here insert description), situated in the county of —, state of Washington.

Dated this — day of —, 18—.

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to se-

cure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition. [L. '86, p. 179, § 6; L. '88, p. 51, § 1; 1 H. C., § 1647.]

See *supra*, § 1116, and notes, deeds construed as mortgages.

As to acknowledgment of mortgage of real property, see § 10565.

See *infra*, § 11099, mortgage exempt from taxation.

Cited in 97 Wash. 549.

Form and Contents. See Remington's Digest, Mtg., §§ 24—27; Biddle Purchasing Co. v. Port Townsend Steel etc. Co., 16 Wash. 681, 48 Pac. 407; Brown v. Ellwell, 17 Wash. 442, 49 Pac. 1068; Osborn v. Scottish-American Co., 22 Wash. 83, 60 Pac. 49; Commercial Nat. Bank of Seattle v. Johnson, 16 Wash. 536, 48 Pac. 267; Speddin v. Sykes, 51 Wash. 267, 98 Pac. 752.

Signature and Subscription: See Remington's Digest, Mtg., § 27-1; American Sav. Bank & T. Co. v. Helgesen, 64 Wash. 54, 116 Pac. 837 (overruled); *Id.*, 67 Wash. 572, 122 Pac. 26, Ann. Cas. 1913A, 390.

Equitable Mortgage: See Remington's Digest, Mtg., § 13; Wood v. Mastick, 2

W. T. 64, 3 Pac. 612; Hossack v. Graham, 20 Wash. 184, 55 Pac. 36; Springer's Estate, *In re*, 97 Wash. 546, 166 Pac. 1134.

Absolute Deed as Mortgage—In General: See Remington's Digest, Mtg., § 14, and cases cited.

An acknowledgment of a mortgage which the mortgagor inadvertently omitted to sign, and her intention to sign, is not equivalent to, or a substitute for, an actual signing, which is required by the statute in order to pass title, nor can it be said that she intended to adopt as her signature her name written in the mortgage as the grantor (overruling, on rehearing, *Id.*, 64 Wash. 54, 116 Pac. 837, Ann. Cas. 1913A, 390): American Savings Bank & Trust Co. v. Helgesen, 67 Wash. 572, 122 Pac. 26, Ann. Cas. 1913A, 390.

§ 10556. [8751.] Private Seals Abolished.

The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [Cf. L. '71, p. 83, §§ 1, 2; L. '86, p. 165, § 1; L. '88, p. 50, § 3; and p. 184, § 1; 1 H. C., § 1427.]

See notes to § 10551.

Cited in 27 Wash. 28; 28 Wash. 435; 47 Wash. 489; 66 Wash. 689; 96 Wash. 600.

Abolishing Use of Seal: In an action upon an indemnity bond under seal, a nonsuit cannot be sustained for mere failure to prove a consideration, since the seal imports a consideration notwithstanding this section abolishing the use of private seals: *Monro v. National Surety Co.*, 47 Wash. 488, 92 Pac. 280.

The fact that an unauthorized broker's contract to sell real estate was executed

under seal does not prevent an implied ratification of the contract from silence and acquiescence therein, especially in view of this section abolishing the use of private seals in contracts and deeds: *McLeod v. Morrison & Eshelman*, 66 Wash. 683, 120 Pac. 528, 38 L. R. A. (N. S.) 783.

A separation agreement affecting only separate property of the spouses need not be sealed, even conceding that this is not operative as to conveyance of community property between husband and wife: *Worden v. Worden*, 96 Wash. 592, 165 Pac. 501.

§ 10557. [8752.] Validation of Prior Deeds Without Seal.

All deeds, mortgages, or other instruments in writing, for the conveyance or encumbrance of real estate, or any interest therein, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid in all courts of law or equity in this state. [L. '88, p. 184, § 2; 1 H. C., § 1428.]

§ 10558. [8753.] Term "Heirs" Unnecessary.

The term "heirs," or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. [L. '88, p. 51, § 4; 1 H. C., § 1429.]

Cited in 49 Wash. 63; 102 Wash. 617.

v. Seattle Construction Co., 102 Wash. 608, 173 Pac. 508.

The omission of the word "heirs" is immaterial: Pioneer Sand & Gravel Co.

§ 10559. [8754.] Acknowledgments, Who Authorized to Take.

Acknowledgments of deeds, mortgages, and other instruments in writing may be taken, in this state, before a judge of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the superior court in this state, or the clerk thereof, or the deputy of such clerk, or before a justice of the peace, or a county auditor, or the deputy of such auditor, or a qualified notary public, or any qualified United States commissioner appointed by any district court of the United States for the state of Washington. All deeds, mortgages, and other instruments in writing at any time heretofore acknowledged according to the provisions of this act are hereby declared legal and valid, in so far as such acknowledgment is concerned. [L. '13, p. 29, § 1. Cf. L. '73, p. 466, § 5; L. '75, p. 107, § 1; L. '77, p. 317, § 5; L. '79, p. 110, § 1; Cd. '81, § 2315; 1 H. C., 1430.]

See supra, § 4094, by county auditor or deputy.

See supra, § 9902, by notary public.

See supra, § 9910, by commissioner of deeds.

See infra, § 11347, transmission by telegraph.

See infra, § 11416, by township clerk.

Nature, Necessity, Taking and Effect of Acknowledgments, in General: See Remington's Digest, Ack., §§ 1—11 and cases cited.

Taking and Certificate: See Remington's Digest, Ack., §§ 4—7; Nixon v. Post, 13 Wash. 181, 43 Pac. 23; Kley v. Geiger, 4 Wash. 484, 30 Pac. 727; Richmond v. Voorhees, 10 Wash. 316, 38 Pac. 1014; Carson v. Thompson, 10 Wash. 295, 38 Pac. 1116; Sullivan v. Treen, 13 Wash. 261, 43 Pac. 68; Johnson v. Irwin, 16 Wash. 652, 48 Pac. 345; Griffin v. Catlin, 25 Wash. 474, 65 Pac. 755, 87 Am. St. Rep. 782; Keene Guaranty Sav. Bank v. Lawrence, 32 Wash. 572, 73 Pac. 680.

Authority of officer de facto to take acknowledgment of a deed cannot be questioned collaterally: Bullene v. Garrison, 1 W. T. 587; Forrester v. Reliable Transfer Co., 59 Wash. 86, 109 Pac. 312, Ann. Cas. 1912A, 1093.

The fact that the notary public taking the acknowledgment of a mortgage is an officer of the corporation to whom the mortgage is executed does not invalidate the acknowledgment, as that is purely a ministerial act: Keene Guaranty Sav. Bank v. Lawrence, 32 Wash. 572, 73 Pac. 680.

A purchase money mortgage without actual acknowledgment, signed by the mortgagees when a certificate of acknowledgment was already filled out and signed, is valid as between the parties or purchasers of the property with notice: Lynch v. Cade, 41 Wash. 216, 83 Pac. 118.

Acknowledgment of Mortgage: See Remington's Digest, Mtg., § 28; Richmond v. Voorhees, 10 Wash. 316, 38 Pac. 1014; Kley v. Geiger, 4 Wash. 484, 30 Pac. 727; Keene Guaranty Sav. Bank v. Lawrence, 32 Wash. 572, 73 Pac. 680; Lynch v. Cade, 41 Wash. 216, 83 Pac. 118.

§ 10560. [8755.] Acknowledgments Out of State.

Deeds or conveyances of lands, or of any estate or interest therein situated in this state, may be executed or acknowledged in any other state or territory of the United States in the form prescribed for executing and acknowledging deeds within this state, and the execution thereof may be

acknowledged before any person authorized to take acknowledgments of deeds by the laws of the state or territory wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state for such purpose. [Cf. L. '65, p. 25, § 1; rep. by L. '66, p. 89, § 1; L. '67, p. 93, § 1; L. 73, p. 466, § 6; L. '77, p. 313, § 6; Cd. '81, § 2316; 1 H. C., § 1431.]

Cited in 3 Wash. 624; 10 Wash. 297; 29 Wash. 633; 51 Wash. 272.

§ 10561. [8756.] Certificate of Authentication, When.

In the case provided for in the preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this state for that purpose, or by the clerk of the court of record of said state or territory, or by a notary public or other officer having a seal of office, then such deed shall have attached thereto a certificate of the clerk of the court of record, under the seal of said court of said county or district, or a certificate of any other proper certifying officer of said district or county, within which said acknowledgment was taken, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he therein represents himself to be, that he is authorized by law to take acknowledgments of deeds, and that he verily believes the signature of the person subscribed thereto to be genuine. [L. '67, p. 94, § 2; L. '73, p. 466, § 7; L. '77, p. 313, § 37; Cd. '81, § 2317; 1 H. C., § 1432.]

Cited in 10 Wash. 85; 29 Wash. 633.

The verification of a lien claim before a foreign notary, whose certificate is attested by his notarial seal, is sufficient to authorize the record of the instrument in the proper county of this state: *Duggan v. Washougal L. & L. Co.*, 10 Wash. 84, 38 Pac. 856.

A deed of assignment made in another state and properly acknowledged, but lacking the notary's seal and clerk's certificate as required by this section, is sufficient to pass the equitable title to the assignee, and enable him to maintain an action to quiet title thereto, under § 793, as against foreign creditors, inasmuch as they do not occupy the relation of bona fide purchasers: *Bloomington v. Weil*, 29 Wash. 611, 70 Pac. 94.

Operation, Conclusiveness of, and Impeachment: See *Remington's Digest, Ack.*, §§ 8—10; *Jackson v. Tatebo*, 3 Wash. 456, 28 Pac. 916; *Gardner v. Port Blakely Mill Co.*, 8 Wash. 1, 35 Pac. 402; *Howard v. Gemming*, 10 Wash. 30, 38 Pac. 766; *Blewett v. Bash*, 22 Wash. 536, 61 Pac. 770; *Western Loan & Savings Co. v. Waisman*, 32 Wash. 644, 73 Pac. 703; *Forrester v. Reliable Transfer Co.*, 59 Wash. 86, 109 Pac. 312, Ann. Cas. 1912A, 1093; *Drew v. Bouffleur*, 69 Wash. 610, 125 Pac. 947; *Smith v. Allen*, 78 Wash. 135, 138 Pac. 683, Ann. Cas. 1915D, 300; *Chaffee v. Hawkins*, 89 Pac. 130, 154 Pac. 143, 157 Pac. 35; *Kangley v. Rogers*, 85 Wash. 250, 147 Pac. 898.

Prima facie proof of acknowledgment: *Blewett v. Bash*, 22 Wash. 536, 61 Pac. 770.

§ 10562. [8757.] Defective Acknowledgments Validated.

All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter, may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned. [Cf. L. '66, p. 94, § 3; L. '73, p. 466, § 8; L. 77, p. 313, § 8; L. '79, p. 110, § 2; Cd. '81, § 2318; 1 H. C., § 1433.]

"Territory" is retained, because the provisions of the section relate only to acts prior to the passage of "this chapter," which was chapter 171 of the Code of 1881.

Cited in 10 Wash. 297.

Statute of 1867, curing defects in acknowledgments previously executed, is constitutional and applies to acknowledgments by married women: *Skellinger v. Smith*, 1 W. T. 369.

§ 10563. [8758.] Foreign Acknowledgments, Who may Take.

Acknowledgments of all deeds, mortgages and other instruments in writing that are required to be acknowledged by any law of this state may be made and taken in any foreign country beyond the limits of the United States, before any minister plenipotentiary, secretary of legation, charge d'affaires, consul-general, consul, vice-consul, consular agent, or commercial agent appointed by the government of the United States, or before any notary public or before the proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. All deeds, mortgages and other instruments at any time heretofore acknowledged according to the provisions of this act are hereby declared legal and valid: Provided, that the provisions of this section shall not affect any existing rights. [L. '75, p. 118, § 2; L. '77, p. 157, § 1; Cd. '81, § 2319; L. '88, p. 1, § 1; 1 H. C., § 1434; L. '01, p. 65, § 1.]

Cited in 71 Wash. 552.

§ 10564. [8759.] Certificate of Acknowledgments.

The person or officer taking such acknowledgment shall certify the same by a certificate written on or annexed to said mortgage, deed, or instrument, which certificate shall be under his official seal, if any he has, and such certificate shall recite in substance that the deed, mortgage, or instrument was acknowledged by the person or persons whose name or names are signed thereto as grantor or principal before him as such officer, with the date of such acknowledgment. [L. '79, p. 158, § 2; Cd. '81, § 2320; 1 H. C., § 1435.]

Cited in 4 Wash. 487; 59 Wash. 91.

This section providing the manner in which acknowledgments shall be taken, applies to acknowledgments taken in this

state: *Forrester v. Reliable Transfer Co.*, 59 Wash. 86, 109 Pac. 312, Ann. Cas. 1912A, 1093.

§ 10565. [8760.] Certificate as Evidence, etc.

Such certificate shall be prima facie evidence of the facts therein recited, and on such certificate, such deed, instrument, or mortgage shall be admitted to record in the auditor's office of the proper county, with like effect as if the same was acknowledged in this state before an officer authorized to take acknowledgments of deeds; and certified copies of such deeds, mortgages, or other instruments of writing, certified by the auditor of the county where recorded, shall be received in evidence to the same extent and with like effect as certified copies of deeds acknowledged within this state are received in evidence when certified by such auditor. [L. '77, p. 158, § 3; Cd. '81, § 2321; 1 H. C., § 1436.]

Cited in 8 Wash. 5; 71 Wash. 552.

§ 10566. [8761.] Certificate of Acknowledgment, Form of.

A certificate of acknowledgment, substantially in the following form, shall be sufficient:—

State of Washington, }
County of —, } ss.

I (here give name of officer and official title), do hereby certify that on this — day of —, 18—, personally appeared before me (name of grantor, and if acknowledged by wife, her name, and add “his wife”), to me known to be the individual or individuals described in and who executed the within instrument, and acknowledged that he (she or they) signed and sealed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this — day of —, A. D., 18—.

— — —.
(Signature of officer.)

[L. '86, p. 179, § 7; L. '88, p. 51, § 2; 1 H. C., § 1437.]

“Signed and sealed”: See § 10556, which was passed at the same session and one day later.

Cited in 4 Wash. 487; 8 Wash. 5; 25 Wash. 475; 29 Wash. 633; 59 Wash. 92; 87 Wash. 665.

The form prescribed by this section is not exclusive and it is not essential to recite that the grantors acted “freely and voluntarily”: Kley v. Geiger, 4 Wash. 484, 30 Pac. 727.

It is sufficient to recite that they “duly acknowledged the execution of the same”: Johnson v. Irwin, 16 Wash. 652, 48 Pac. 345.

Where a notary before whom a lien

was sworn to omitted to add his signature and official place of residence, such notice may be amended by the addition of the place of residence of the notary: Sullivan v. Treen, 13 Wash. 261, 43 Pac. 38.

The negligence of a notary public in taking the acknowledgment of impostors, upon a mere introduction by a person of good reputation, is a question for the jury, in view of this section: Ehlers v. United States Fidelity & Guaranty Co., 87 Wash. 662, 152 Pac. 518.

§ 10567. [8761½.] Corporate Acknowledgment.

Certificates of acknowledgment of an instrument acknowledged by a corporation substantially in the following form shall be sufficient:

State of —, }
County of —, } ss.

On this — day of —, A. D., 190—, before me personally appeared —, to me known to be the (president, vice-president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

— — —.
(Signature and title of officer.)

[L. '03, p. 245, § 1.]

Cited in 59 Wash. 92.

§ 10568. [8762.] Validating Deeds, etc.

All deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid. [L. '79, p. 158, § 4; Cd. '81, § 2322; 1 H. C., § 1438.]

From a consideration of the curative acts passed from time to time in this state relating to defective acknowledgments, it appears that it was the settled policy of the law not to render conveyances in good faith signed by the grantors ineffectual in consequence of an informality or defect as to proof of their execution, whether in the matter of acknowledgment or of attesting witnesses: *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116.

Although at time of execution and record of a deed the acknowledgment was invalid for want of authority in the officer before whom it was taken, yet, where under a subsequent curative act such acknowledgments are validated in all cases where the rights of third parties have not intervened, the record of the instrument, which was improper at the time, becomes thereby cured, and is full constructive notice to all subsequent purchasers: *Id.*

In the certificate of the notary public who took the acknowledgment of the first deed, he described himself as notary for territory: Held, that if this defect was

material, it was cured by the act of November 10, 1873: *Carson v. Railsback*, 3 W. T. 168, 13 Pac. 618.

A defectively acknowledged deed is as good to the grantee in possession of the granted premises, against the grantor and all persons claiming under him with notice, as if the deed was in all respects formally executed: *Mann v. Young*, 1 W. T. 454.

A purchaser is fairly charged with information which he would have obtained by inquiring into matters brought to his notice; and in equity and perhaps in law, under our statute, the unrecorded deed of a bona fide purchaser is good as against a recorded deed of one who is not a bona fide purchaser: *Id.*

While this court does not pass upon the validity of a deed acknowledged before a county auditor in the year 1867, and not authenticated by his official seal, it holds that if such deed were, for that reason, defective, the defect was remedied by the curative act of 1873, p. 481: *Kenyon v. Knipe*, 2 W. T. 422, 7 Pac. 854.

§ 10569. [8763.] Validating Sheriffs' Deeds.

In all cases where real estate has been heretofore duly sold by a sheriff in pursuance of law, by virtue of an execution or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof], or other person entitled to the same, by the sheriff making the sale, the successor in office of the sheriff making the sale having made a deed of the premises so sold to the purchaser or other person entitled to the same, such deed shall be valid and effectual to convey to the grantee the lands or premises so sold: Provided, that this section shall not be construed to affect the equities of third parties in the premises. [L. '91, p. 178, § 1; 1 H. C., § 1441.]

See *supra*, § 4175, successor to complete process.

§ 10570. [8764.] Defective Attestations Cured.

All deeds, mortgages, or other instruments in writing, heretofore executed, to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: Provided, nothing in this section shall be construed to affect vested rights, or impair contracts made in good faith between parties prior to the passage of this section: And provided further, that nothing in this section shall be construed to give validity to, or in any manner affect, the sale or transfer

of real estate made by the territory or state of Washington, or any officer, agent, or employee thereof, prior to the passage of this section. [L. '90, p. 89, § 1; 1 H. C., § 1442.]

§ 10571. [8765.] Subsequently Acquired Titles to Vest in Grantees.

Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his or their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands, and to his or their heirs and assigns, and shall thereafter run with such land. [L. '71, p. 195, § 1; 1 H. C., § 2436.]

Cited in 1 Wash. 556; 10 Wash. 30; 31 Wash. 443; 39 Wash. 624; 57 Wash. 278; 64 Wash. 63; 102 Wash. 616.

A covenant in a deed following upon and connected with the habendum et tenendum clause, in the words "and the said B, his heirs and assigns will warrant, and by these presents forever defend," is sufficient to pass an after-acquired title of the grantor: *Mann v. Young*, 1 W. T. 454.

Where one by bargain and sale, for a consideration received and enjoyed, undertakes to convey property which he does not own, his after-acquired title inures to the benefit of his vendee: *Brazee v. Schofield*, 2 W. T. 209, 3 Pac. 265.

A deed in the form of a quitclaim which purports to convey the real estate would operate to convey an after-acquired title: *Ankeny v. Clark*, 1 Wash. 549, 20 Pac. 583.

A mortgage covering tide lands belonging to the state which contains a covenant of seisin and general warranty against all lawful claims, conveys the after-acquired title of the mortgagor, secured through a state deed issued after the decree and foreclosure sale, upon an application for purchase made pending

the foreclosure: *People's Sav. Bank v. Lewis*, 37 Wash. 344, 79 Pac. 932.

A bond for a deed, made by a patentee prior to the issuance of a patent, is not a conveyance, and is insufficient to pass an after-acquired title: *Turner v. Ladd*, 42 Wash. 274, 84 Pac. 866.

An oral agreement between husband and wife that real property thereafter acquired by either should be the separate property of such party is void, and does not change its community character, in view of the acts making the same community property, and providing that conveyances of any interest in real estate shall be by deed: *Graves v. Graves*, 48 Wash. 664, 94 Pac. 481.

Under this section, and independently thereof, an after-acquired title inures to the benefit of the grantee, and this rule applies to titles acquired through mortgage foreclosure: *Gough v. Center*, 57 Wash. 276, 106 Pac. 774.

A duly acknowledged contract between parties in possession of tide lands with preference right to purchase, granting easement for a waterway, is a deed, within this section relating to after-acquired title: *Pioneer Sand & Gravel Co. v. Seattle Const. & Dry Dock Co.*, 102 Wash. 608, 173 Pac. 508.

§ 10572. [8766.] Conveyances Between Husband and Wife.

A husband may give, grant, sell, or convey directly to his wife, and a wife may give, grant, sell, or convey directly to her husband his or her community right, title, interest, or estate in all or any portion of their community real property. And every deed made from husband to wife, or from wife to husband, shall operate to divest the real estate therein recited from any or every claim or demand as community property, and shall vest the same in the grantee as separate property. The grantor in

all such deeds, or the party releasing such community interest or estate, shall sign, seal, execute and acknowledge the deed as a single person, without the joinder therein of the married party therein named as grantee: Provided, however, that the conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift, or conveyance: And provided further, that any deeds of gift conveyances or releases of community estate by or between husband and wife heretofore made, but in which the husband and wife have not joined as grantors, said deeds, where made in good faith and without intent to hinder, delay, or defraud creditors, shall be and the same are hereby fully legalized as valid and binding. [L. '88, p. 52, § 1; 1 H. C., § 1443.]

See *supra*, § 5828, burden of proof as to transactions between spouses.

See *supra*, §§ 6891—6893, community property.

See *supra*, § 6894, agreements as to status of community property.

Seal.—This section, so far as it requires a seal, seems to prescribe a rule for this class of deeds differing from those in other cases: See § 10556, which was approved on the same day.

Cited in 4 Wash. 277, 279; 49 Wash. 107; 51 Wash. 92; 58 Wash. 95, 96; 74 Wash. 237, 407; 75 Wash. 463; 77 Wash. 558; 86 Wash. 153, 651; 89 Wash. 120; 90 Wash. 523, 524; 92 Wash. 130; 96 Wash. 102, 599; 98 Wash. 444; 100 Wash. 651; 101 Wash. 279; 102 Wash. 87; 105 Wash. 113, 117; 113 Wash. 232, 265.

Contracts and Conveyances Between Husband and Wife: See Remington's Digest, *Husb. & Wife*, §§ 63, 64; *McKnight v. McDonald*, 34 Wash. 98, 74 Pac. 1060; *Stewart v. Bank of Endicott*, 82 Wash. 106, 143 Pac. 458; *Ewing v. Wagenen*, 6 Wash. 39, 32 Pac. 1009; *Klosterman v. Harrington*, 11 Wash. 138, 39 Pac. 376; *Dillon v. Dillon*, 13 Wash. 594, 43 Pac. 894; *Sawtelle v. Weymouth*, 14 Wash. 21, 43 Pac. 1101; *Churchill v. Stephenson*, 14 Wash. 620, 45 Pac. 28; *Zeimantz v. Blake*, 39 Wash. 6, 80 Pac. 822; *Graves v. Graves*, 48 Wash. 664, 94 Pac. 481; *Carpenter v. Brackett*, 57 Wash. 460, 107 Pac. 359; *Hayden v. Zerbst*, 49 Wash. 103, 94 Pac. 909; *Shorrett v. Signor*, 58 Wash. 89, 107 Pac. 1033; *Sponogle v. Sponogle*, 86 Wash. 649, 151 Pac. 43.

Section 5882, *supra*, casting the burden of proving the good faith of transactions between husband and wife upon the party asserting the good faith, does not authorize a subsequent creditor to raise the question of good faith; especially in view of this section: *Smith v. Weed*, 75 Wash. 452, 134 Pac. 1070.

This section must be construed as in *pari materia* with section 5882, *supra*: *Erfurth v. Erfurth*, 90 Wash. 521, 156 Pac. 523.

Under this section, property acquired by and in the possession of a husband becomes his separate property upon his wife's making a quitclaim deed thereof

to him, although he subsequently proceeded to remove clouds from the title by purchasing tax titles and other interests, where such steps and the quitclaim deed were all parts of one transaction whereby the husband, living separate and apart from the wife, sought and claimed to acquire a separate estate: *Hayden v. Zerbst*, 49 Wash. 103, 94 Pac. 909.

The husband's contingent liability upon a lease, upon which no rent was due at the time, is an "existing equity" in favor of creditors, within this section: *Sallaske v. Fletcher*, 73 Wash. 593, 132 Pac. 648, Ann. Cas. 1914D, 760, 47 L. R. A. (N. S.) 320; *Robinson v. Agnew-Copping Realty & Investment Co.*, 100 Wash. 651, 171 Pac. 1057.

Under the statutes of this state, conveyances which are fraudulent as to creditors are subject to be defeated by creditors having contingent claims subsequently maturing: *Sallaske v. Fletcher*, 73 Wash. 593, 132 Pac. 648, Ann. Cas. 1914D, 760, 47 L. R. A. (N. S.) 320.

Property acquired by a man before marriage, which he afterward deeded to his wife, and which she the next day deeded back to him, is his separate property, under this section: *Brown v. Davis*, 98 Wash. 442, 167 Pac. 1095.

This section with reference to the form of a conveyance between husband and wife of community property has no application to conveyances of an interest in separate property: *Powers v. Munson*, 74 Wash. 234, 133 Pac. 453.

By this section a conveyance of community property from husband to wife, makes it her separate property: *Sponogle v. Sponogle*, 86 Wash. 649, 151 Pac. 43.

Under this section, upon a deed of community realty from a husband to the wife, the same becomes her separate property, and is not liable for a community debt subsequently contracted by the husband: *Stewart v. Kleinschmidt*, 51 Wash. 90, 97 Pac. 1105.

The grantors shall execute the deed, as

a single person, without joinder by the grantee: *Union Savings & Trust Co. v. Manney*, 101 Wash. 274, 172 Pac. 251.

Simultaneous deeds, between husband and wife, when void for want of effective delivery: *Bloor v. Bloor*, 105 Wash. 110, 177 Pac. 722.

§ 10573. [8767.] Husband and Wife—Power of Attorney.

A husband or wife may make and execute powers of attorney for the sale, conveyance, transfer, or encumbrance of his or her separate estate, both real and personal, without the other spouse joining in the execution thereof. Such power of attorney shall be acknowledged and certified in the manner provided by law for the conveyance of real estate. Nor shall anything herein contained be so construed as to prevent either husband or wife from appointing the other his or her attorney in fact for the purposes provided in this section. [L. '88, p. 53, § 2; 1 H. C., § 1444.]

Cited in 4 Wash. 279.

Under the laws of this state making it competent for the wife to authorize her husband to execute a mortgage in her behalf, power to authorize him to execute a note in her name is necessarily included therein: *Richmond v. Voorbees*, 10 Wash. 316, 38 Pac. 1014.

A husband having a general power of attorney from his wife authorizing him to mortgage all their real estate can make a valid mortgage of their homestead, which is community property, without her joining in it: *Oregon Mortgage Co. v. Hersner*, 14 Wash. 515, 45 Pac. 40; affirmed in *Stone v. So Relle*, 14 Wash. 704, 46 Pac. 119.

In a power of attorney by a wife to her husband authorizing him to borrow money, make and execute notes and mortgages, etc., on realty owned by her: Held, that the primary object of the power was to

enable the husband to borrow money upon the faith of himself and wife, and as incident thereto to execute a note and mortgage upon their property, including that which the wife owned in her individual capacity or as a member of the community: *Richmond v. Voorhees*, supra.

The execution by the husband and wife of a power of attorney reciting that certain real estate is the property of the wife is a binding admission of such fact by the husband, in the absence of any evidence to the contrary, despite the subsequent revocation of the power: *Yesler v. Hochstettler*, 4 Wash. 349, 30 Pac. 398.

A general power of attorney by a wife to her husband to sell land will not authorize him to make a dedication for street purposes: *Anderson v. Bigelow*, 16 Wash. 198, 47 Pac. 426.

§ 10574. [8768.] Execution of Conveyance Under Power.

Any conveyance, transfer, deed, lease, or other encumbrances executed under and by virtue of such power of attorney shall be executed, acknowledged, and certified in the same manner as if the person making such power of attorney had been unmarried. [L. '88, p. 53, § 3; 1 H. C., § 1445.]

See *infra*, § 11347, power of attorney transmitted by telegraph.

§ 10575. [8769.] Power of Attorney to Convey Community Property.

A husband may make and execute a letter of attorney to the wife, or the wife may make and execute a letter of attorney to the husband, authorizing the sale or other disposition of his or her community interest or estate in the community property, and as such attorney in fact to sign the name of such husband or wife to any deed, conveyance, mortgage, lease, or other encumbrance or to any instrument necessary to be

executed by which the property conveyed or transferred shall be released from any claim as community property. And either said husband or said wife may make and execute a letter of attorney to any third person to join with the other in the conveyance of any interest either in separate real estate of either, or in the community estate held by such husband or wife in any real property. And both husband and wife owning community property may jointly execute a power of attorney to a third person authorizing the sale, encumbrance, or other disposition of community real property, and so execute the necessary conveyance or transfer of said real estate. [L. '88, p. 53, § 4; 1 H. C., § 1446.]

Cited in 4 Wash. 279; 14 Wash. 518.

A general power of attorney to a husband by a wife to sell land will not authorize him to make a dedication for street purposes and accordingly declara-

tions and acts of his tending to show dedication by estoppel are not binding on the wife: *Anderson v. Bigelow*, 16 Wash. 198, 47 Pac. 426.

§ 10576. [8770.] Validation of Powers of Attorney.

All powers of attorney heretofore made and executed by any married woman joined with her husband and duly acknowledged and certified, and all powers of attorney heretofore made or executed by husband or wife to the other, authorizing the sale or other disposition of real estate, whether separate or community real estate, duly acknowledged, conformably with the [four] previous sections, and all conveyances heretofore and hereafter executed under and by virtue of such powers of attorney, and acknowledged and certified in the manner provided herein, shall be valid and binding: Provided, that any rights vested in third persons shall not be affected by anything in this section contained. [L. '88, p. 53, § 5; 1 H. C., § 1447.]

§ 10577. [8771.] Bona Fide Purchaser Protected by Record Title, When.

Whenever any person, married or single, having in his or her name the legal title of record to any real estate, shall sell or dispose of the same to an actual bona fide purchaser, a deed of such real estate from the person holding such legal record title to such actual bona fide purchaser shall be sufficient to convey to and vest in such purchaser the full legal and equitable title to such real estate free and clear of any and all claims of any and all persons whatsoever not appearing of record in the auditor's office of the county in which such real estate is situated. [L. '91, p. 368, § 1; 1 H. C., § 1448.]

This section relates to community property only.

Cited in 5 Wash. 191; 6 Wash. 503; 21 Wash. 383; 80 Wash. 212; 102 Wash. 87.

This act is restricted by its title to the protection of innocent purchasers of community property only: *Sengfelder v. Hill*, 21 Wash. 371, 58 Pac. 250.

Under this section, subsequent purchasers of portions of a tract conveyed to their common grantor are not bound to take notice of his improvements and inclosures as indicating an error in the

description in the deeds, where his fences only partially inclosed the land; but they are bona fide purchasers where they bought with reference to the description contained in the deeds as they appeared on the public records: *McIver v. Hilstad*, 80 Wash. 206, 141 Pac. 306.

A bona fide purchaser from the holder of the record title will be protected: *Lanigan v. Mills*, 102 Wash. 82, 172 Pac. 894.

§ 10578. [8772.] Claim in Community Realty to be Filed, When.

A husband or wife having an interest in real estate, by virtue of the marriage relation, the legal title of record to which real estate is or shall be held by the other, may protect such interest from sale or disposition by the husband or wife, as the case may be, in whose name the legal title is held, by causing to be filed and recorded in the auditor's office of the county in which such real estate is situated, an instrument in writing setting forth that the person filing such instrument is the husband or wife, as the case may be, of the person holding the legal title to the real estate in question, describing such real estate and the claimant's interest therein; and when thus presented for record such instrument shall be filed and recorded by the auditor of the county in which such real estate is situated, in the same manner and with like effect as regards notice to all the world, as deeds of real estate are filed and recorded. And if either husband or wife fails to cause such an instrument to be filed in the auditor's office in the county in which real estate is situated the legal title to which is held by the other, within a period of ninety days from the date when such legal title has been made a matter of record, any actual bona fide purchaser of such real estate from the person in whose name the legal title stands of record, receiving a deed of such real estate from the person thus holding the legal title, shall be deemed and held to have received the full legal and equitable title to such real estate free and clear of all claim of the other spouse. [L. '91, p. 368, § 2; 1 H. C., § 1449.]

See *supra*, § 6893, control and disposition of.

Cited in 23 Wash. 392; 82 Wash. 180; 90 Wash. 522.

The filing of an inventory, under the act of 1873, by the wife in the office of the county auditor setting forth that certain property is her separate property, cannot be treated as an admission of that fact by her husband: *Yesler v. Hochstettler*, 4 Wash. 349, 30 Pac. 398.

Under the statute of 1871, requiring the filing of an inventory of lands claimed by the wife as her separate estate, where a husband took title in his own name to lands purchased with wife's money while such statute was in force, and after its repeal such land was sold, and proceeds invested in other lands, and title taken in the wife's name, her claim thereto was not waived by a failure to file inventory prior to the repeal of the statute: *Wey-*

mouth v. Sawtelle, 14 Wash. 32, 44 Pac. 109.

The failure of one spouse to file in the office of the county auditor an instrument setting up his or her claim in community property held in the name of the other spouse, as provided by this section, does not estop such spouse from claiming an interest therein, except as against such bona fide purchasers as purchase without knowledge of the existence of the marriage relation, or who could not, by the exercise of reasonable diligence, have obtained such knowledge: *Dane v. Daniel*, 23 Wash. 379, 63 Pac. 268.

A wife is estopped where she deserted her husband for more than ten years, filed no community property claim, and he sold and conveyed to a bona fide purchaser: *Magee v. Bisley*, 82 Wash. 178, 143 Pac. 1088.

§ 10579. [8773.] Community Claim—Cloud upon Title—Removal of.

The instrument in writing provided for in the last preceding sections shall be deemed to be a cloud upon the title of said real estate, and may be removed by the release of the party filing the same, or by any court having jurisdiction in the county where said real estate is situated, whenever it shall appear to said court that the real estate described in said instrument is the separate property of the person in whose name the

title to the said real estate, or any part thereof, appears to be vested, from the conveyances on record in the office of the auditor of the county where said real estate is situated. [L. '91, p. 369, § 3; 1 H. C., § 1450.]

See *supra*, §§ 785—809, actions to quiet title.

Cited in 90 Wash. 522.

§ 10580. [8774.] Limitation for Compliance With Last Three Sections.

In so far as the last three sections affect married persons having already acquired and now holding real estate under existing laws, a period of three months from the date at which this act shall take effect is hereby allowed to such persons within which to comply with its provisions. [L. '91, p. 369, § 4; 1 H. C., § 1451.]

CHAPTER III.

DISABILITIES OF ALIENS AND INDIANS.

§ 10581. Aliens—Rights and Disabilities—Definitions.

In this act, unless the context otherwise requires,

(a) "Alien" does not include an alien who has in good faith declared his intention to become a citizen of the United States, but does include all other aliens and all corporations and other organized groups of persons a majority of whose capital stock is owned or controlled by aliens or a majority of whose members are aliens;

(b) "Land" does not include lands containing valuable deposits of minerals, metals, iron, coal or fire clay or the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom, but does include every other kind of land and every interest therein and right to the control, possession, use, enjoyment, rents, issues or profits thereof except a mortgage and except a right to the possession, use or enjoyment of land for a period of not more than ten years for a purpose for which an alien is accorded the use of land by a treaty between the United States and the country whereof he is a citizen;

(c) "Land" also includes any share or interest in a corporation or other organized group of persons deemed an alien in this act which has title to land either heretofore or hereafter acquired;

(d) To "own" means to have the legal or equitable title to or the right to any benefit of;

(e) "Title" includes every kind of legal or equitable title;

(f) Ownership of or title to land acquired by inheritance or in good faith either under mortgage or in the ordinary course of justice in the collection of debts, or acquired by a female citizen afterwards expatriated by marriage to an alien, is excluded;

(g) "Inheritance" includes devise;

(h) "Mortgage" includes every kind of lien upon land;

(i) A mortgage of land under which an alien is entitled before default to any control, possession, use or enjoyment of the land, is an absolute conveyance; and

(j) "Person" includes an individual, partnership, corporation or any other organized group of persons. [L. '21, p. 156, § 1.]

Constitutional and Statutory Restrictions on the Ownership of Lands by Aliens: See Remington's Digest, Aliens, §§ 3, 4; State ex rel. Winston v. Morrison, 18 Wash. 664, 52 Pac. 228; State ex rel. Winston v. Hudson Land Co., 19 Wash. 85, 52 Pac. 574, 40 L. R. A. 430; Oregon Mtg. Co. v. Carstens, 16 Wash. 165, 47 Pac. 421, 35 L. R. A. 841; State ex rel. Morrell v. Superior Court, 33 Wash. 542, 74 Pac. 686; Goon Gan v. Richardson, 16 Wash. 373, 47 Pac. 762; Abrams v. State, 45 Wash. 327, 88 Pac. 327, 122 Am. St. Rep. 914, 9 L. R. A. (N. S.) 186; Keene v. Zindorf, 81 Wash. 152, 142 Pac. 484; Prentice v. How, 84 Wash. 136, 146 Pac. 388.

An alien can acquire lands in this state containing deposits of limestone, silica,

silicated rock and clay, to be used in good faith in the manufacture of cement, such deposits being "minerals" within the meaning of Constitution, Article II, § 33, and not to be restricted by the words "metals, iron, coal or fire clay," following; since a construction must be adopted to give effect to every part of the clause and to give words their natural and ordinary meaning: State ex rel. Atkinson v. Evans, 46 Wash. 219, 89 Pac. 565, 10 A. L. R. (N. S.) 1163.

The state cannot maintain an action to escheat lands, conveyed to and held by an alien in violation of the Constitution, after the same have been conveyed by the alien to a citizen: State ex rel. Atkinson v. World Real Estate Com. Co., 46 Wash. 104, 89 Pac. 471.

§ 10582. Aliens—Restrictions as to Land.

An alien shall not own land or take or hold title thereto. No person shall take or hold land or title to land for an alien. Land now held by or for aliens in violation of the Constitution of the state is forfeited to and declared to be the property of the state. Land hereafter conveyed to or for the use of aliens in violation of the constitution or of this act shall thereby be forfeited to and become the property of the state. [L. '21, p. 157, § 2.]

Disabilities and property rights of aliens as proper subjects of treaty regulation. *Ann. Cas.* 1912A, 1100; 4 *A. L. R.* 1391; 17 *A. L. R.* 636; 32 *L. R. A.* 177; *L. R. A.* 1915E, 327.

Estoppel of grantor in deed to deny title of alien grantee on ground

that latter cannot hold property. 13 *Ann. Cas.* 532.

Right of alien to acquire title to realty by adverse possession. *Ann. Cas.* 1913C, 1240.

Right of alien to locate mining claim. 7 *L. R. A.* (N. S.) 813.

§ 10583. Fiduciary Restrictions.

An alien is not qualified to be trustee under a will, executor, administrator or guardian, if any part of the estate is land: Provided, an alien now lawfully acting in any such capacity may continue for not more than two years. [L. '21, p. 157, § 3.]

Right of alien to act as executor or administrator. 3 *Ann. Cas.* 988; *Ann. Cas.* 1912A, 747.

§ 10584. Land Acquired by Aliens by Inheritance, etc.

If hereafter an alien acquire land by inheritance or in good faith either under mortgage or in the ordinary course of justice in the collection of debts and, remaining an alien, hold the same for more than twelve years from the date title was so acquired or control or possession taken, the land shall be forfeited to the state. [L. '21, p. 157, § 4.]

Right of alien to receive or transmit property by inheritance. 12 *Am.*

St. Rep. 93; 31 *L. R. A.* 85, 146; 37 *L. R. A.* (N. S.) 108.

§ 10585. Limitations as to Mortgagee.

If an alien, claiming or holding under a mortgage, has control, possession, use or enjoyment of the mortgaged land, the obligation secured by the mortgage shall be deemed matured and the mortgage shall be foreclosed; and if the land be not sold under foreclosure within three years after the alien has obtained control, possession, use or enjoyment, the mortgage and the obligation thereby secured shall be forfeited to the state and shall be foreclosed for the use of the state. [L. '21, p. 158, § 5.]

§ 10586. Citizenship—Presumption of Bad Faith.

Unless an alien who has declared his intention to become a citizen of the United States be admitted to citizenship within seven years after his declaration was made, it shall be presumed that he declared his intention in bad faith. [L. '21, p. 158, § 6.]

§ 10587. Violations of Act—Offense Enumerated.

Whoever

- (a) Knowingly transfers or conveys land or title to land to an alien; or
- (b) Knowingly takes land or title to land in trust for an alien; or
- (c) Holding in trust for an alien land or title to land, either heretofore or hereafter acquired, fails for thirty days after acquiring knowledge or notice that he holds in trust for an alien to disclose the fact to the attorney general or the prosecuting attorney of the county where the land is situated; or
- (d) Being an alien and having title to land or control, possession, use or enjoyment of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of his interest in and title to the land; or
- (e) Being an officer or agent of a corporation or other organized group of persons which has title to land or control, possession, use or enjoyment of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of the interest of persons not citizens of the United States in the corporation or other organized group of persons; or
- (f) Being an officer or agent of a corporation or other organized group of persons which holds in trust for an alien title to land or control or possession of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of the alien's interest in and title to the land; or
- (g) Willfully counsels, aids or abets another in violating or evading this act,

Is guilty of a gross misdemeanor. [L. '21, p. 158, § 7.]

§ 10588. Enforcement of Alien Act.

It shall be the duty of the attorney general and of the prosecuting attorneys of the several counties to enforce this act, and of the attorney general to direct and control its enforcement. [L. '21, p. 159, § 8.]

§ 10589. Forfeitures—Disposition.

Property forfeited to the state by this act shall inure to the permanent common school fund and be managed and disposed of accordingly. [L. '21, p. 159, § 9.]

§ 10590. Scope of Act.

This act shall not impair any title or right heretofore or hereafter acquired from or derived through an alien in good faith and for value by a person not under an alien's disability. [L. '21, p. 159, § 10.]

§ 10591. Partial Invalidity.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not [a]ffect the validity of the act as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. [L. '21, p. 159, § 11.]

§ 10592. [8777.] Confirmation of Titles to Aliens.

All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of the state Constitution, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: Provided, that nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [L. '95, p. 268, § 1.]

See notes to § 10581.

§ 10593. [8778.] Puyallup Indians Authorized to Convey Lands, etc.

The said Indians [Puyallup] who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state, by virtue of treaties made between them and the United States, shall have power to lease, encumber, grant, and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [L. '90, p. 500, § 1; 1 H. C., § 2957.]

See note to next section.

The title of this and the next section is "An act enabling the Indians to sell and alien the lands of the Puyallup Indian reservation, in the state of Washington."

Cited in 38 Wash. 128—131; 43 Wash. 488.

Wash. 483, 86 Pac. 933; McDonald v. White, 46 Wash. 334, 89 Pac. 891.

As to the effect of this and the following section, see Goudy v. Meath, 38 Wash. 126, 80 Pac. 295; Nelson v. John, 43

Indians as subject to state regulation. 13 Ann. Cas. 192; Ann. Cas. 1914B, 652; Ann. Cas. 1915D, 371.

§ 10594. [8779.] Conveyance by.

All deeds, conveyances, encumbrances, or transfers of any nature and kind executed by any Indian, or in any manner disposing of any land,

or interest therein, shall be by deed executed in the same manner as prescribed for the execution of deeds conveying real estate, or any interest therein, except that the same shall in all cases be acknowledged before a judge of a court of record. In taking said acknowledgment, the said judge shall explain to the grantor the contents of said deed or instrument, and the effect of the signing or execution thereof, and so certify the same in the acknowledgment, and before the same shall be admitted to record shall duly examine and approve the said deed or other instrument. [L. '90, p. 500, § 2; 1 H. C., § 2958.]

See notes to last section.

By the third section of the act from which the above and the next preceding section are taken it is provided that the act should take effect upon the consent of the United States to the removal of the restrictions upon conveyances by the Indians.

§ 10595. [8780.] Indians may Sell Stone, Timber, etc., from Land.

Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [L. '99, p. 155, § 1.]

CHAPTER IV.

RECORDING INSTRUMENTS.

§ 10596. [8781.] Recording of Conveyances, Effect of.

All deeds, mortgages, and assignments of mortgages, shall be recorded in the office of the county auditor of the county where the land is situated, and shall be valid as against bona fide purchasers from the date of their filing for record in said office; and when so filed shall be notice to all the world. [Cf. L. '54, p. 403, § 4; L. '58, p. 28, §§ 1, 2; L. '60, p. 299, § 4; L. '63, p. 430, § 4; L. '73, p. 465, § 4; L. '77, p. 312, § 4; Cd. '81, § 2314; 1 H. C., § 1439; L. '97, p. 5, § 1.]

* See supra, §§ 3781, 3787, 3791, recording chattel mortgages, satisfactions and conditional sales.

Cited in 1 Wash. 556; 10 Wash. 156; 21 Wash. 318; 22 Wash. 417; 26 Wash. 468; 32 Wash. 562; 41 Wash. 562; 57 Wash. 79; 58 Wash. 194; 62 Wash. 522; 65 Wash. 686, 687; 66 Wash. 612; 100 Wash. 627; 111 Wash. 641; 112 Wash. 28, 29.

Assignments of mortgages are not within the operation of the earlier recording acts of this state: Howard v. Shaw, 10 Wash. 151, 38 Pac. 746.

The recording acts in 1891 did not require the assignment of a mortgage to be

recorded: Fischer v. Woodruff, 25 Wash. 67, 64 Pac. 923, 87 Am. St. Rep. 742.

A power to bring an action for wrongful death is not entitled to be recorded: Koloff v. Chicago, Mil. & P. S. R. Co., 71 Wash. 543, 129 Pac. 398.

Filing and Recording Chattel Mortgages: See Remington's Digest, Chat. Mtg., §§ 23—29, and cases cited.

See notes to §§ 3781, 3787 and 3796, supra.

Recording Dedications: See Remington's Digest, Dedication, § 12; *Seattle v. Hill*, 23 Wash. 92, 62 Pac. 446.

Filing and Recording Lis Pendens: See Remington's Digest, Lis Pendens, § 5, and cases cited.

See notes to § 243, *supra*.

Filing and Recording Conditional Bills of Sale: See Remington's Digest, Sales, § 176, and cases cited.

See note to § 3790, *supra*.

Filing and Recording Deeds: See Remington's Digest, Deeds, §§ 20-25; *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116; *Swanstrom v. Washington Trust Co.*, 41 Wash. 561, 83 Pac. 1112; *State ex rel. Baldwin v. Moore*, 7 Wash. 173, 34 Pac. 461; *Ritchie v. Griffiths*, 1 Wash. 429, 25 Pac. 341, 22 Am. St. Rep. 155, 12 L. R. A. 384; *Sengfelder v. Hill*, 21 Wash. 371, 58 Pac. 250; *Skellinger v. Smith*, 1 W. T. 369.

Recording Acts, in General: See Remington's Digest, Records, §§ 1-3.

§ 1. **Statutory Provisions:** *State ex rel. Baldwin v. Moore*, 7 Wash. 173, 34 Pac. 461; *Fischer v. Woodruff*, 25 Wash. 67, 64 Pac. 923, 87 Am. St. Rep. 742.

§ 2. **Deposit and Reception of Written Instruments:** *Sawyer v. Vermont Loan etc. Co.*, 41 Wash. 524, 84 Pac. 8.

§ 3. **Recording Written Instruments:** *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116; *Dunsmuir v. Port Angeles Gas etc. Co.*, 24 Wash. 104, 63 Pac. 1095; *Dial v. Inland Logging Co.*, 52 Wash. 81, 100 Pac. 157; *Seattle National Bank v. Ally*, 66 Wash. 610, 120 Pac. 94.

RIGHTS AND REMEDIES: See Remington's Digest, Records, §§ 6-10.

§ 6. **Access to Records or Files:** *State ex rel. Cook v. Reed*, 36 Wash. 638, 79 Pac. 306.

§ 7. — **Remedy for Denial of Access:** *State ex rel. Cook v. Reed*, 36 Wash. 638, 79 Pac. 306.

§ 7-1. **Supplying or Restoring Lost Records:** *State ex rel. Brockway v. Whitehead*, 88 Wash. 549, 153 Pac. 349.

§ 8. **Conclusiveness of Record:** *Book v. Willey*, 8 Wash. 267, 35 Pac. 1098.

§ 9. **Proof of Recording:** *Jewett v. Darlington*, 1 W. T. 601; *McPherson v. Smith*, 14 Wash. 226, 44 Pac. 255; *James v. James*, 35 Wash. 650, 77 Pac. 1080.

§ 10. **Damages for Wrongful Recording:** *Littlefield v. Bowen*, 90 Wash. 286, 155 Pac. 1053, Ann. Cas. 1918B, 177.

Constructive Notice by Records: See Remington's Digest, Fraudulent Conv., § 45; *Wells v. McMahon*, 3 W. T. 532, 18 Pac. 73; *Hyman v. Barmon*, 6 Wash.

516, 33 Pac. 1076; *Reed v. Loney*, 22 Wash. 433, 61 Pac. 41.

Recording and Priority of Mortgages: See Remington's Digest, Mtg., §§ 34, 64-69.

§ 34. **Sufficiency of Index:** *Malbon v. Grow*, 15 Wash. 301, 46 Pac. 330.

§ 64. **Priority of Record—In General:** *Brace v. Superior Land Co.*, 65 Wash. 681, 118 Pac. 910; *Heal v. Evans Creek Coal & Coke Co.*, 71 Wash. 225, 128 Pac. 211.

§ 65. — **Instruments Recorded at Same Time:** *Goetzinger v. Rosenfeld*, 16 Wash. 392, 47 Pac. 882, 38 L. R. A. 257.

§ 66. **Notice Affecting Priority—Actual Notice:** *Bank v. Doherty*, 42 Wash. 317, 84 Pac. 872, 114 Am. St. Rep. 123, 4 L. R. A. (N. S.) 1191.

§ 67. — **Record of Mortgage as Notice:** *Sengfelder v. Hill*, 21 Wash. 371, 58 Pac. 250; *Attebery v. O'Neil*, 42 Wash. 487, 85 Pac. 270; *Congregational Church Bldg. Soc. v. Scandinavian Free Church*, 24 Wash. 433, 64 Pac. 750; *Zurfluh v. Hartman*, 103 Wash. 452, 174 Pac. 963.

§ 68. **Failure to Record Mortgage—Subsequent Bona Fide Purchasers or Mortgagees:** *Coolidge v. Schering*, 32 Wash. 557, 73 Pac. 682; *Farmers & Mechanics' Bank v. Western Loan & Bldg. Co.*, 103 Wash. 349, 174 Pac. 1.

§ 69. — **Subsequent Creditors:** *Dawson v. McCarty*, 21 Wash. 314, 57 Pac. 816, 75 Am. St. Rep. 841.

Constructive Notice, and Facts Putting on Inquiry in General: See Remington's Digest, Ven. & Pur., § 120; *Dennis v. Northern Pac. R. Co.*, 20 Wash. 320, 55 Pac. 210; *Schmidt v. Olympia Light & Power Co.*, 46 Wash. 360, 90 Pac. 212; *Bullock v. Wallace*, 47 Wash. 690, 92 Pac. 675; *Bernard v. Benson*, 58 Wash. 191, 108 Pac. 439, 137 Am. St. Rep. 1051; *Maughlin Mill Co. v. Hamilton*, 61 Wash. 66, 111 Pac. 1067; *Parker v. Burwell*, 69 Wash. 386, 125 Pac. 151; *Golden v. Pilchuck Tribe No. 42*, Improved Order of Red Men, 71 Wash. 581, 129 Pac. 93; *McIver v. Hilstad*, 80 Wash. 206, 141 Pac. 306; *Wardell v. Commercial Waterway District No. 1*, 80 Wash. 495, 141 Pac. 1045; *Dill v. Bush*, 86 Wash. 525, 150 Pac. 1162.

The grantee in a quitclaim deed, for value and without notice of a prior unrecorded quitclaim deed, is a bona fide purchaser, within this section: *McDougall v. Murray*, 57 Wash. 76, 106 Pac. 490, 26 L. R. A. (N. S.) 159.

As between real estate mortgages given as security for pre-existing debts, the one first executed and delivered takes priority, although the other was first recorded; a mortgagee for a pre-existing debt not being a bona fide purchaser, within this section: *McDonald & Co. v. Johns*, 62

Wash. 521, 114 Pac. 175, 33 L. R. A. (N. S.) 57.

A purchase money mortgage does not, under our recording acts, take priority over others unless they concur in time or the priorities are controlled by contract or equities between the several mortgages: Wakefield v. Fish, 62 Wash. 564, 114 Pac. 180.

Record of instrument out of line of title as constructive notice: 18 Ann. Cas. 13; Ann. Cas. 1917E, 486.

Record of deed or contract for con-

veyance of one parcel with covenant of easement affecting another parcel owned by grantor as constructive notice to subsequent purchaser or encumbrancer of latter parcel. 16 A. L. E. 1013.

Effect of recording, as deed, deed intended as mortgage. 8 Ann. Cas. 104.

Sufficiency of record of instrument where statute does not prescribe particular book for recordation. 7 Ann. Cas. 356.

§ 10597. [8782.] Mixed Chattel and Real Estate Mortgage Recorded as Real Estate Mortgage.

Any mortgage upon property of a mixed character, consisting in part of real estate and in part of personal property, and particularly upon railroad property, in the state of Washington, shall be admitted to record and be recorded in the several counties wherein the property is located as a real estate mortgage when acknowledged in the manner provided by law, and the original of such mortgage or a copy thereof certified by the auditor of any county in the state of Washington wherein the original has been recorded may be filed in a file to be kept for that purpose in the office of the auditor of the county wherein such property is situated, and said record and filing shall constitute notice to all persons of the existence of the mortgage lien provided for by said mortgage. [L. '99, p. 118, § 1.]

See *supra*, §§ 3781, 3791, recording chattel mortgages and conditional sales.

§ 10598. [8783.] Validation of Previously Recorded Mortgages.

In case any mortgage covering mixed real estate and personal property has heretofore been or may hereafter be recorded in the record of mortgages of real estate, or in the record of chattel mortgages, and in case the affidavit required by law to be attached to chattel mortgages was not or shall not be recorded as a part of said chattel mortgage but has been or shall be afterwards recorded upon a separate page of said record and a reference made at the place of the original record of said real estate or chattel mortgage to the said affidavit stating the volume and page on which the same may be found, said record shall constitute notice from and after the date of the filing of said affidavit, the same as if the affidavit and mortgage had been recorded together at the same time and at the same place. [L. '99, p. 119, § 2.]

§ 10599. [8784.] Irregularly Executed Instruments—Effect of Recording.

Every instrument in writing purporting to convey or encumber real property, which has been recorded in the proper auditor's office, although such instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded in accordance with the laws regulating the execution, acknowledgment, and recording of

such instrument then in force. [Cf. L. '73, p. 481, § 1; Cd. '81, § 2323; 1 H. C., § 1440.]

See §§ 10559—10562, and 10568, *supra*.

Cited in 1 Wash. 556; 10 Wash. 300; 58 Wash. 194; 111 Wash. 641.

This section cures any defect by reason of the omission of the county auditor's seal: *Kenyon v. Knipe*, 2 W. T. 422, 7 Pac. 854.

Also the omission by a notary to show the county or state: *Carson v. Railsback*, 3 W. T. 168, 13 Pac. 618; *Carson v. Dahms*, 3 W. T. 176, 13 Pac. 618; *Carson v. Chandler*, 3 W. T. 177, 13 Pac. 618.

This section validates acknowledgments taken by officers not previously authorized to act, where the rights of third parties have not intervened: *Carson v. Thompson*, 10 Wash. 295, 38 Pac. 1116.

In such case the record of the instrument, which was improper at the time, becomes thereby cured, and is full constructive notice to all subsequent purchasers: *Carson v. Thompson*, 10 Wash. 295, 58 Pac. 1116.

§ 10600. [8785.] To Procure Record Books.

For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such books for records as the business of the office requires. He has the custody of and must keep at all times in his office all books, records, maps, and papers deposited with him as such officer. [Cd. '81, § 2786; 1 H. C., § 198; L. '93, p. 283, § 10.]

Cited in 1 Wash. 556; 58 Wash. 195; 111 Wash. 642.

Under this section, and in view of the uniform custom to record instruments affecting the title to real property in Deed Records, and of personal property

in Miscellaneous Records, the record of an executory contract for the sale of real estate in Miscellaneous Records does not import notice: *Bernard v. Benson*, 58 Wash. 191, 108 Pac. 439, 137 Am. St. Rep. 1051.

§ 10601. [8786.*] Recording Instruments.

He must, upon payment of his fees for the same, record separately in large and well-bound books:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, powers of attorney to convey real estate, and leases which have been acknowledged or proved: Provided, that deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Marriage contracts;

(3) Official bonds;

(4) Instruments describing or relating to the separate property or community interest of married women;

(5) Patents to lands and receiver's receipts, whether for mineral, timber, homestead or pre-emption claims or cash entries;

(6) Certificates of sales for county or municipal taxes;

(7) All such other papers or writings as are required by law to be recorded and such as are required by law to be filed if requested so to do by the party filing the same. [L. '19, p. 556, § 1. Cf. L. '65, p. 26, § 1; Cd. '81, § 2727; 1 H. C., § 199; L. '93, p. 284, § 11.]

See *supra*, § 4105, fees of county auditors.

See *supra*, § 10596, conveyances may be recorded, effect of.

See *infra*, § 10613, recording receiver's receipts.

See notes to § 10596, *supra*.

Cited in 7 Wash. 174; 10 Wash. 156, 455; 58 Wash. 194; 71 Wash. 553; 111 Wash. 642.

§ 10602. Photographic Process.

Any state, county or municipal officer charged with the duty of recording documents, plats or other papers in public records, may, in lieu of transcription, record the same by a photographic or photo-mechanical process; but no process shall be so used that does not produce a clear, legible and durable record and that has not been first tested and approved for the intended purpose by the public archives commission of the state of Washington. [L. '19, p. 295, § 1.]

§ 10603. [8787.] To Keep General Indices.

Every auditor must keep a general index, direct and inverted. The direct index shall be divided into seven columns, and with heads to the respective columns, as follows: Time of reception, grantor, grantee, nature of instrument, volume and page where recorded, remarks, description of property. He shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the name of grantees being [in] alphabetical order. For the purposes of this act, the term "grantor" shall be construed to mean any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. He shall also keep a well-bound book in which shall be platted all maps of towns, villages, or additions to the same within the county, together with the description, legend, acknowledgment or other writing thereon. He shall keep an index to such book of plats, which shall contain the name of the town, village, or addition. He shall also enter in the general index above referred to, the name of the party or parties platting such town, village, or addition, in the column prescribed for "grantors," describing the grantee in such case as the "public": Provided, that the auditor shall not receive or record any such plat or map until the same shall have been approved by the mayor and common council of the municipality in which the property so platted be situated, or if such property be not situated within any municipal corporation, then such plat must be first approved by the board of county commissioners of such county: Provided further, that the auditor shall not receive for record any plat, map or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in his office. [L. '69, p. 314, § 24; Cd. '81, § 2728; 1 H. C., § 200; L. '93, p. 285, § 12.]

See supra, §§ 3781, 3791, index to chattel mortgages and conditional sales.

See supra, § 4150, to index surveys by county engineer.

Cited in 10 Wash. 156; 27 Wash. 625; 43 Wash. 712; 61 Wash. 395; 85 Wash. 495; 86 Wash. 528; 105 Wash. 74; 111 Wash. 642, 643.

L. R. A. 384; Malbon v. Grow, 15 Wash. 301, 46 Pac. 330; Dirks v. Collin, 37 Wash. 620, 79 Pac. 1112; Sawyer v. Vermont Loan etc. Co., 41 Wash. 524, 84 Pac. 8.

Index: See Remington's Digest, Records, § 4; Ritchie v. Griffiths, 1 Wash. 429, 25 Pac. 341, 22 Am. St. Rep. 155, 12

Under this section, requiring a record of plats, and under section 6398, giving the county board general supervision over

county roads in the county, and imposing the duty to open roads necessary for public convenience, the approval and filing of a plat does not cast upon the county the duty of keeping open every highway dedicated by the plat; but before such duty devolves upon the county, it must have invited the public to use such high-

way: *Tait v. King County*, 85 Wash. 491, 148 Pac. 586.

An index of a record of a deed giving the description as parts of lots 5 and 6 is a sufficient compliance with this section to put a purchaser on inquiry as to a building restriction in the deed: *Jones v. Berg*, 105 Wash. 69, 177 Pac. 712.

§ 10604. [8788.] Satisfaction of Instruments.

Whenever any mortgage, bond, lien or instrument encumbering real estate has been satisfied, released, or discharged, whether by written release across the record or upon the margin thereof, or by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note in both the indices, in the column headed "remarks," opposite to the appropriate entry, that such instrument, lien, or encumbrance has been satisfied. And in all cases of the satisfaction or release of any recorded lien, mortgage, transcript of judgment, mechanic's lien, registered taxes, or other encumbrance whatsoever, the auditor shall enter, with red ink, across the record of the instrument creating or evidencing such lien or encumbrance, the word "satisfied," with the day of the date of such satisfaction or release, and note the same in index of transcripts of judgment. [Cf. L. '69, p. 315, § 25; Cd. '81, § 2729; 1 H. C., § 201.]

See supra, § 3787, satisfaction of chattel mortgages.

§ 10605. [8789.] To Record Certified Copies of Final Judgments—Notice.

The auditor must file and record, with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lienholders, purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant, or transfer. [Cd. '81, § 2730; 1 H. C., § 202.]

See supra, § 445, lien of judgment.

§ 10606. [8790.] Indorsement of Time Instrument Received for Record.

When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the county auditor's office for record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and must record the same without delay, together with the acknowledgments, proofs, and certificates written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded. [Cf. L. '69, p. 313, § 19; Cd. '81, § 2731; 1 H. C., § 203.]

Laws of 1886, page 162, § 1, attempted amendment void for defective title.

§ 10607. [8791.] Further Indorsements.

He must also indorse upon such instrument, paper, or notice, the time when, and the book and page in which, it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order. [Cd. '81, § 2732; 1 H. C., § 204.]

§ 10608. [8792.] To Search Records and Furnish Certificate, When.

The auditor must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyance, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded. [Cd. '81, § 2733; 1 H. C., § 205.]

Cited in 37 Wash. 622, 623.

This and the next section were not intended to make the county auditor a public abstractor to the extent of requiring him to make a complete list of all transfers affecting particular tracts, and the keeping of "tract indices" is not justified by said statute: *Dirks v. Collin*, 37 Wash. 620, 79 Pac. 1112.

Right to inspect and make abstract of public records without payment

of fee to custodian. 6 Ann. Cas. 542.

Rights, as regards copying or reproduction, of parties to sale, mortgage or other contract in relation to records or abstracts. 7 A. L. R. 156.

Neglect of recording officer with regard to recordation as affecting operation of instrument. 4 Ann. Cas. 561; Ann. Cas. 1913B, 69.

§ 10609. [8793.] Liability for Neglect of Duty.

If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice within a reasonable time after receiving the same; or
2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or
3. Neglects or refuses to keep in his office such indexes as are required by this chapter, or to make the proper entries therein; or
4. Neglects or refuses to make the searches and to give the certificate required by this chapter; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or
5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein,—

He is liable to the party aggrieved for the amount of damage which may be occasioned thereby. [Cd. '81, § 2734; 1 H. C., § 206.]

§ 10610. [8794.] Fees to be Paid in Advance.

Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service con-

nected with his office, until his fees for the same, as prescribed by law, are, if demanded, paid or tendered. [Cd. '81, § 2735; 1 H. C., § 207.]

See *supra*, § 4105, fees of county auditors.

§ 10611. [8795.] Duties of Auditor as Custodian.

The county auditor, in his capacity of recorder of deeds, is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, encumbrances, and other instruments of writing, indexes thereto, maps, charts, town plats, survey, and other books and papers constituting the records and files in said office of recorder of deeds; and all such records and files are and shall be matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public, and convenient for said public inspection, examination, and search, and not interfere with the said auditor's personal control and responsibility for the same, or prevent him from promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine, and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [Cd. '81, § 2736; L. '83, p. 34, § 1; L. '86, p. 163, § 1; 1 H. C., § 208.]

§ 10612. [8796.] Certified Copies as Evidence.

Copies of all deeds or other instruments of writing, maps, documents, and papers, which by law are to be filed or recorded in the office of the county auditor, and all transcripts or exemplifications of the records of the proceedings of the board of county commissioners, certified by said auditor under official seal, shall be admitted as prima facie evidence in all the courts of this state. [L. '69, p. 315, § 27; Cd. '81, § 2737; 1 H. C., § 209.]

See *supra*, § 1260, certified copies of instruments as evidence.

Cited in 8 Wash. 5, 473.

§ 10613. [8797.] Recording Land Office Receipts.

Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this act becomes a law, and every

record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world full notice of all the rights and equities of the person named in said cash or final receipt or certificate, in the land described in such receipt or certificate. [L. '90, p. 92, § 1; 1 H. C., § 2940.]

See *supra*, § 10601, recording instruments generally.

CHAPTER V.

SATISFACTION AND ASSIGNMENTS OF MORTGAGES.

§ 10614. [8798.] Mortgages, How Satisfied of Record.

Whenever the amount due on any mortgage is paid, the mortgagee, his legal representatives or assigns, shall, at the request of any person interested in the property mortgaged, acknowledge satisfaction of the same on the margin of the page upon which the mortgage is recorded (which marginal satisfaction shall be at the time attested by the auditor or his deputy), or by executing an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified; and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted *prima facie* evidence of such satisfaction. [L. '86, p. 116, § 1; 1 H. C., § 1660; L. '01, p. 64, § 1.]

Satisfaction of chattel mortgage: see *supra*, § 3787.

Cited in 73 Wash. 573, 595.

§ 10615. [8799.] Failure to Satisfy—Penalty.

If the mortgagee shall fail so to do after sixty days from the date of such request or demand, he shall forfeit and pay to the mortgagor the sum of twenty-five dollars, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded. [L. '86, p. 117, § 2; 1 H. C., § 1661.]

Cited in 69 Wash. 8; 94 Wash. 263, 267.

This section does not give a new right of action, but is merely a substitution of a penalty in the way of damages for the general relief allowed in equity, and affects the measure of damages only:

Morrill v. Title Guaranty & Surety Co., 94 Wash. 258, 162 Pac. 360, 163 Pac. 733.

Where the facts show a mortgagor entitled to recover the \$25 penalty provided by this section, the assessment of the damages is a matter of law for the court

without testimony: *Morrill v. Title Guaranty & Surety Co.*, 94 Wash. 258, 162 Pac. 360, 163 Pac. 733.

Where a cross-complaint against a mortgagee for wrongfully withholding a discharge of a satisfied mortgage sets forth all the facts necessary for a recovery of the penalty provided by this section, but asks judgment for the loss sustained by reason of a depreciation in the value of the property, thus mistaking the measure of damages, it is not a departure to treat the cross-complaint as amended and give judgment for the penalty, although the statute was not pleaded: *Morrill v. Title Guaranty & Surety Co.*, 94 Wash. 258, 162 Pac. 360, 163 Pac. 733.

Where property was conveyed to a surety company by a trust deed as security for going upon a contractor's bond, and after completion of the work the surety company refused to redeed the property until its value had depreciated, the right of the grantor to recover for the loss by depreciation is limited to the sum of \$25 by this section; since the effect of the statute is to substitute remedies and the same is intended as compensation to the mortgagor as well as a punishment to the mortgagee, and is not strictly a penalty: *Morrill v. Title Guaranty & Surety Co.*, 94 Wash. 258, 162 Pac. 360, 163 Pac. 733.

§ 10616. [8800.] Assignee of Mortgage may Record Deed of Assignment.

Any person to whom any real estate or chattel mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, by him signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record. [L. '97, p. 23, § 1.]

Cited in 25 Wash. 513; 47 Wash. 471; 53 Wash. 100; 66 Wash. 614.

This section authorizes the record of assignments of mortgages, and thereunder and section 10596 subsequent bona fide encumbrancers may rely upon an unauthorized satisfaction by an original mortgagee whose assignee had failed to record his assignment: *Seattle National Bank v. Ally*, 66 Wash. 610, 120 Pac. 94.

An abstract shows a marketable title, notwithstanding reference to an unreleased mortgage, where it appears from the abstract that the mortgage had been assigned to one R., who subsequently obtained the full title and conveyed with

full covenants, there being at the time no other outstanding lien and no record of any assignment of the mortgage pursuant to this and the next section; since a merger of the mortgage was shown: *Summy v. Ramsey*, 53 Wash. 93, 101 Pac. 506.

Under this section the purchaser of the property may rely on a satisfaction, without requiring production of the negotiable paper which the mortgage secured: *Christenson v. Raggio*, 47 Wash. 468, 92 Pac. 348.

Application of recording acts to assignment of mortgages. 5 *Ann. Cas.* 339; *Ann. Cas.* 1914C, 753.

§ 10617. [8801.] Former Satisfactions by Assignees Validated in Certain Cases.

All satisfaction of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfaction of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages. [L. '97, p. 23, § 2.]

Cited in 53 Wash. 100.

CHAPTER VI.

LEASES.

§ 10618. [8802.] Tenancy from Year to Year Abolished—Exception.

Tenancies from year to year are hereby abolished, except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses, or seals. [L. '67, p. 101, § 1; Cd. '81, § 2053; 1 H. C., § 2797.]

For former statute on this subject, see L. '66, pp. 78—80.

See supra, § 810 et seq., unlawful detainer.

See supra, § 1188 et seq., laborers' and landlords' lien on crops.

See supra, § 5852, termination of lease on use of premises for gaming.

See supra, §§ 6892, 6893, and notes, on community property.

See supra, §§ 10551, 10556, private seals and witnesses dispensed with.

See supra, §§ 10604, 10605, Indians may lease lands.

Cited in 26 Wash. 541; 36 Wash. 329—332; 41 Wash. 479; 46 Wash. 690; 59 Wash. 91; 69 Wash. 91; 79 Wash. 214, 345; 80 Wash. 408, 418; 104 Wash. 120, 478.

Creation of Tenancy from Year to Year: See Remington's Digest, Land. & Ten., § 41; Watkins v. Balch, 41 Wash. 310, 83 Pac. 321, 3 L. R. A. (N. S.) 852.

Conversion of Tenancy at Will to Tenancy from Year to Year: See Remington's Digest, Land. & Ten., § 43; Snyder v. Harding, 38 Wash. 666, 80 Pac. 789.

CREATION AND EXISTENCE OF THE RELATION IN GENERAL: See Remington's Digest, Land & Ten., §§ 1—4.

§ 1. Express Contract in General: Budlong v. Budlong, 31 Wash. 228, 71 Pac. 751.

§ 2. Lease or Sale—Personal Property: Quinn v. Parke & Lacy Machinery Co., 5 Wash. 276, 31 Pac. 866.

§ 3. Implied Tenancy — Occupancy Without Agreement: Bryant Lumber & Shingle Mill Co. v. Pacific Iron & Steel Works, 48 Wash. 574, 94 Pac. 110; McLennan v. Grant, 8 Wash. 603, 36 Pac. 682; Woolen v. Sloan, 94 Wash. 551, 162 Pac. 985.

§ 4. Evidence as to Relation: Budlong v. Budlong, 31 Wash. 228, 71 Pac. 751; Carlson v. Curran, 42 Wash. 647, 85 Pac. 627, 6 L. R. A. (N. S.) 260; Hay v. Long, 78 Wash. 616, 139 Pac. 761.

LEASES AND AGREEMENTS IN GENERAL—REQUISITES AND VALIDITY: See Remington's Digest, Land. & Ten., §§ 5—13.

§ 5. Nature of the Contract: Hoover v. Chambers, 3 W. T. 26, 13 Pac. 547; Rich-

ards v. Redelsheimer, 36 Wash. 325, 78 Pac. 934.

§ 6. Agreements for Leases: Page v. Carnine, 29 Wash. 387, 69 Pac. 1093; Richards v. Redelsheimer, 36 Wash. 325, 78 Pac. 934.

§ 7. Parol Lettings and Contracts: Richards v. Redelsheimer, 36 Wash. 325, 78 Pac. 934.

This section providing that leases may be in writing or print and shall be valid for any term not exceeding one year without acknowledgment, witnesses, or seal, has no application to an oral lease, which can be sustained only as a lease from month to month: Armstrong v. Burkett, 104 Wash. 476, 177 Pac. 333.

The mere possession, payment of rent, building up and conducting of a business in the usual way for the sole benefit of the tenant, does not make an oral lease good for a definite term, on the theory of estoppel, without some further benefit to the landlord or injustice to the tenant: Armstrong v. Burkett, 104 Wash. 476, 177 Pac. 333.

§ 8. Form and Contents of Lease: Schulte v. Schering, 2 Wash. 127, 26 Pac. 78; Richards v. Redelsheimer, 36 Wash. 325, 78 Pac. 934.

§ 9. Execution, Delivery and Acceptance of Lease or Contract: Hoover v. Chambers, 3 W. T. 26, 13 Pac. 547; Isaacs v. Holland, 4 Wash. 54, 29 Pac. 976; Dietz v. Winehill, 6 Wash. 109, 32 Pac. 1056; Starwich v. Washington Cut Glass Co., 64 Wash. 42, 116 Pac. 459, Ann. Cas. 1913A, 262.

§ 10. Acknowledgment and Attestation: McGlauffin v. Holman, 1 Wash. 239, 24 Pac. 439; Schulte v. Schering, 2 Wash. 127, 26 Pac. 78; Dorman v. Plowman, 41

Wash. 477, 83 Pac. 322; *Forrester v. Reliable Transfer Co.*, 59 Wash. 86, 109 Pac. 312, Ann. Cas. 1912A, 1093; *Jamison v. Reilly*, 92 Wash. 538, 159 Pac. 699, Ann. Cas. 1918D, 160.

A lease for one year, although executed within the month prior to its taking effect, is not a lease for more than one year, within this section, requiring such leases to be acknowledged: *Pappas v. General Market Co.*, 104 Wash. 116, 176 Pac. 25.

§ 10-1. **Legality of Object:** *Havton v. Seattle Brewing & Malting Co.*, 66 Wash. 248, 119 Pac. 739, 37 L. R. A. (N. S.) 432.

§ 11. **Estoppel or Waiver as to Defects or Objections:** *McLennan v. Grant*, 8 Wash. 603, 36 Pac. 682; *Brown v. Baruch*, 24 Wash. 572, 64 Pac. 789.

§ 12. **Ratification of Defective or Invalid Lease or Contract:** *Owens v. Swanton*, 25 Wash. 112, 64 Pac. 921.

§ 12-1. **Modification:** *Oregon & Washington R. Co. v. Elliott Bay Mill & Lumber Co.*, 70 Wash. 148, 126 Pac. 406.

In a landlord's action for damages for the tenant's failure to summer-fallow half of the land each year, whether the lease was modified by an agreement was for the jury, where the defendant testified that the cropping of the east half two years in succession was with plaintiffs' consent and approval: *Bono v. Warner*, 108 Wash. 180, 182 Pac. 946.

§ 13. **Rescission:** *Tryon v. Davis*, 8 Wash. 106, 35 Pac. 598; *Isaacs v. Holland*, 4 Wash. 54, 29 Pac. 976; *Dietz v. Winehill*, 6 Wash. 109, 32 Pac. 1056; *Snyder v. Harding*, 34 Wash. 286, 75 Pac. 812.

CONSTRUCTION AND OPERATION: See *Remington's Digest, Land. & Ten.*, §§ 14—16.

§ 14. **Oral Contracts:** *Richards v. Redlsheimer*, 36 Wash. 325, 78 Pac. 934; *Spreitzer v. Miller*, 98 Wash. 601, 168 Pac. 179.

§ 14-1. **Construction by Parties:** *Looff v. Seattle Park Co.*, 70 Wash. 363, 126 Pac. 902.

§ 15. **Conditions:** *Knapp v. Crawford*, 16 Wash. 524, 48 Pac. 261; *Shepard v. Sullivan*, 94 Wash. 134, 162 Pac. 34; *Stratford v. Seattle Brewing & Malting Co.*, 94 Wash. 125, 162 Pac. 31, L. R. A. 1917C, 931; *Coates v. Carse*, 96 Wash. 178, 164 Pac. 760; *Johnson v. Norman*, 98 Wash. 331, 167 Pac. 923.

Under a farm lease contemplating that the hogs and their increase be sold, and giving each party a half interest in the proceeds of all sales, the lease expressly providing that no partnership existed, neither party could sell the hogs without the other's consent: *Klundt v. Bachtold*, 110 Wash. 594, 188 Pac. 924.

A farm lease vested an undivided half interest in hogs shipped for sale in each of the parties, where it provided that each is to have one-half of the proceeds of the sale when any of the hogs or their increase are sold: *Klundt v. Bachtold*, 110 Wash. 594, 188 Pac. 924.

What constitutes a breach of condition by a "sale," within the meaning of a lease: *Druxinman v. Smith*, 113 Wash. 124, 193 Pac. 224.

§ 15-1. **Liability of Lessor for Breach of Contract:** *Michaels v. Levinson*, 68 Wash. 364, 123 Pac. 520; *Purcell v. Warburton*, 70 Wash. 129, 126 Pac. 89.

See, also, *Progress Amusement Co. v. Baker*, 106 Wash. 64, 179 Pac. 81.

§ 16. **Liability of Lessee for Breach of Contract:** *Schlumpf v. Sasake*, 38 Wash. 278, 80 Pac. 457; *Oldfield v. Angeles Brewing & Malting Co.*, 62 Wash. 260, 113 Pac. 630, Ann. Cas. 1912C, 1050, 35 L. R. A. (N. S.) 426; *Dutton v. Christie*, 63 Wash. 372, 115 Pac. 856; *Forrester v. Reliable Transfer Co.*, 65 Wash. 602, 118 Pac. 753; *Oldfield v. Angeles Brewing & Malting Co.*, 77 Wash. 158, 137 Pac. 469; *Moore v. Twin City Ice & Cold Storage Co.*, 92 Wash. 608, 159 Pac. 779, Ann. Cas. 1918D, 540.

Use and Enjoyment of Premises: See *Remington's Digest, Land. & Ten.*, §§ 48—94, and cases cited.

Rights and Liabilities as to Rents: See *Remington's Digest, Land. & Ten.*, §§ 95—121, and cases cited.

§ 10619. [8803.] Tenancy from Month to Month, How Terminated.

When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other. [L. '67, p. 101, § 2; Cd. '81, § 2054; 1 H. C., § 2798.]

See *supra*, §§ 812, 814, notice to quit.

See *supra*, § 5852, termination, premises used for gaming.

Statute of frauds: See § 5825, *supra*.

Cited in 26 Wash. 567; 36 Wash. 330, 332; 41 Wash. 479; 46 Wash. 451, 690; 57 Wash. 375; 69 Wash. 90, 91; 71 Wash. 511, 512; 77 Wash. 628; 80 Wash. 408; 103 Wash. 160, 161.

Creation of Tenancy from Month to Month: See Remington's Digest, Land. & Ten., § 42; Harris v. Halverson, 23 Wash. 779, 63 Pac. 549; Schreiner v. Stanton, 26 Wash. 563, 67 Pac. 219; London & San Francisco Bank v. Curtis, 27 Wash. 656, 68 Pac. 329; Madeß v. Howaldt, 46 Wash. 450, 90 Pac. 588; Ryan v. Lambert, 49 Wash. 649, 96 Pac. 232; Hockersmith v. Sullivan, 71 Wash. 244, 128 Pac. 222; Corner Market Co. v. Gillman, 77 Wash.

625, 138 Pac. 2; Eriksen v. Manufacturers' Distributing Co., 103 Wash. 159, 173 Pac. 1095.

See, also, Armstrong v. Burkett, 104 Wash. 476, 177 Pac. 333.

Termination: See Remington's Digest, Land. & Ten., § 44; Mitchell v. Matheson, 23 Wash. 723, 63 Pac. 564; Watkins v. Balch, 41 Wash. 310, 83 Pac. 321, 3 L. R. A. (N. S.) 852; Dorman v. Plowman, 41 Wash. 477, 83 Pac. 322; Oregon & Washington R. Co. v. Vulcan Iron Works, 57 Wash. 372, 106 Pac. 1120; Anderson v. Frye & Bruhn, 69 Wash. 89, 124 Pac. 499; Spreitzer v. Miller, 98 Wash. 601, 168 Pac. 179.

§ 10620. [8804.] Tenancy at Specific Time, When.

In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [L. '67, p. 101, § 3; Cd. '81, § 2055; 1 H. C., § 2799.]

Section 2800, 1 Hill's Code, providing for forfeiture after notice, etc., is omitted as superseded by § 812, supra.

See notes to § 10618, supra.

Cited in 46 Wash. 690.

TERMS FOR YEARS—Duration of Term: See Remington's Digest, Land. & Ten., § 22; Noyes v. Loughhead, 9 Wash. 325, 37 Pac. 452; Boston Clothing Co. v. Selberg, 28 Wash. 262, 68 Pac. 715; Morris v. Healy Lumber Co., 46 Wash. 686, 91 Pac. 186; Faucett v. Northern Clay Co., 84 Wash. 382, 146 Pac. 857; Gates v. Hutchinson Investment Co., 88 Wash. 522, 153 Pac. 322; Samson Inv. Co. v. Thompson Furniture Co., 102 Wash. 661, 173 Pac. 627.

ASSIGNMENT AND SUBLETTING: See Remington's Digest, Land. & Ten., §§ 23—29.

§ 23. Right of Lessee or Tenant to Assign or Sublet in General: Tibbals v. Iffland, 10 Wash. 451, 39 Pac. 102; Tipton v. Martzell, 21 Wash. 273, 57 Pac. 806, 75 Am. St. Rep. 838.

§ 24. Covenants and Conditions, as to Assignment or Subletting—What Constitutes Breach: Spencer v. Commercial Co., 30 Wash. 520, 71 Pac. 53; Cuschner v. Westlake, 43 Wash. 690, 86 Pac. 148; Burns v. Dufresne, 67 Wash. 158, 121 Pac. 46; D'Ambrosio v. Nardone, 72 Wash. 172, 129 Pac. 1092; Oregon-Washington R. & Nav. Co. v. Eastern Oregon Banking Co., 81 Wash. 617, 143 Pac. 154; Johnson v. Norman, 98 Wash. 331, 167 Pac. 923.

§ 25. — Evidence of Assignment or Subletting: Tibbals v. Iffland, 10 Wash. 451, 39 Pac. 102; Hay v. Long, 78 Wash. 616, 139 Pac. 761.

§ 25-1. Parol Assignments and Sublettings: Field v. Copping, Agnew &

Scales, 65 Wash. 359, 118 Pac. 329, 36 L. R. A. (N. S.) 488.

§ 26. Requisites and Validity of Written Instrument: Klosterman v. Vader, 6 Wash. 99, 32 Pac. 1055; Tibbals v. Iffland, 10 Wash. 451, 39 Pac. 102; Frye v. Hill, 14 Wash. 83, 43 Pac. 1097; American Savings Bank & Trust Co. v. Mafridge, 60 Wash. 180, 110 Pac. 1015; Hay v. Long, 78 Wash. 616, 139 Pac. 761.

§ 27. Distinction Between Assignment and Sublease: Shannon v. Grindstaff, 11 Wash. 536, 40 Pac. 123; Weander v. Claussen Brewing Assn., 42 Wash. 226, 84 Pac. 735, 114 Am. St. Rep. 110, 7 Ann. Cas. 536.

Right to Maintain Unlawful Detainer: Sheridan v. Doherty, 106 Wash. 561, 181 Pac. 16.

§ 28. Construction and Operation of Assignments in General: Reynolds v. Dexter Horton & Co., 2 Wash. 185, 26 Pac. 221; McLennan v. Grant, 8 Wash. 603, 36 Pac. 682; Johnson v. Zufeldt, 56 Wash. 5, 104 Pac. 1132; Merritt v. Lillybalde, 57 Wash. 159, 106 Pac. 621; American Sav. Bank & Trust Co. v. Mafridge, 60 Wash. 180, 110 Pac. 1015.

§ 29. Construction and Operation of Subleases: Shannon v. Grindstaff, 11 Wash. 536, 40 Pac. 123; Beebe v. Tyra, 49 Wash. 157, 94 Pac. 940.

EXTENSIONS AND RENEWALS: See Remington's Digest, Land. & Ten., §§ 30—32.

§ 30. Covenants for Renewal in General: Tischner v. Rutledge, 35 Wash. 285,

77 Pac. 388; *Anderson v. Frye & Bruhn*, 69 Wash. 89, 124 Pac. 499.

§ 31. Option to Renew and Election: *Phillips v. Reynolds*, 20 Wash. 374, 55 Pac. 316, 72 Am. St. Rep. 107.

Where a lease gave the right to a renewal or an extension without providing for the giving of any notice to the lessor, the lessee is entitled to the benefit of an extension or renewal by continuing in possession at the end of the original term, without giving formal notice of intention to exercise the option, provided such possession is indicative of an exercise of the option and nothing is done to forfeit his rights: *Henry v. Bruhn & Henry*, 110 Wash. 321, 188 Pac. 348.

§ 32. Option to Purchase Premises: *Behrens v. Cloudy*, 50 Wash. 400, 97 Pac. 450; *Sandberg v. Light*, 55 Wash. 189, 104 Pac. 205; *Keene v. Zindorf*, 81 Wash. 152, 142 Pac. 484.

TERMINATION: See *Remington's Digest, Land. & Ten.*, §§ 33—40.

§ 33. Expiration of Term: *Browder v. Phinney*, 37 Wash. 70, 79 Pac. 598; *Wisner v. Richards*, 62 Wash. 429, 113 Pac. 1090, Ann. Cas. 1912D, 160.

§ 34. Notice: *Stevens v. Jones*, 40 Wash. 484, 82 Pac. 754; *Wisner v. Richards*, 62 Wash. 429, 113 Pac. 1090, Ann. Cas. 1912D, 160; *Munson v. Baldwin*, 88 Wash. 379, 153 Pac. 338.

§ 35. Transfer or Termination of Landlord's Estate: *State ex rel. Hartman v. Superior Court*, 21 Wash. 369, 58 Pac. 572; *Woody v. Wagner*, 89 Wash. 429, 154 Pac. 819.

§ 36. Merger of Tenancy in General: *Tolsma v. Adair*, 32 Wash. 383, 73 Pac. 347; *Hockersmith v. Sullivan*, 71 Wash. 244, 128 Pac. 222.

Where a contract for the purchase of mining claims expressly provided that it was subject to a lease which required payment of royalties for a two-year term, consummation of the contract by the lessee to whom it had been assigned does not merge the lease, or dispense with the payment of royalties during the term: *Rayburn v. Stewart-Calvert Co.*, 105 Wash. 570, 178 Pac. 454.

§ 36-1. Breach of Covenant or Condition—In General: *Pacific Warehouse Co. v. McKenzie-Hunt Paper Co.*, 80 Wash. 489, 141 Pac. 1147, Ann. Cas. 1916B, 303.

A lessee's right to a renewal of lease may be forfeited by breach of covenant, and the lessor should be allowed to show violation of provisions respecting the manner in which the land was to be cropped, and default in payment of rent: *Henry v. Bruhn & Henry*, 110 Wash. 321, 188 Pac. 506.

§ 36-2. Effect of Prohibition Law: *Stratford v. Seattle Brewing & Malting Co.*, 94 Wash. 125, 162 Pac. 31, L. R. A. 1917C, 931; *Brunswick-Balke-Collender Co. v. Seattle Brewing & Malting Co.*, 98 Wash. 12, 167 Pac. 58; *Yesler Estate, Inc., v. Continental Distributing Co.*, 99 Wash. 480, 169 Pac. 967.

§ 37. Surrender—By Act of the Parties: *Hart v. Pratt*, 19 Wash. 560, 53 Pac. 711; *Carstens Packing Co. v. Trough-ton, Inc.*, 90 Wash. 196, 155 Pac. 758.

§ 38. — What Constitutes Surrender in General: *Hart v. Pratt*, 19 Wash. 560, 53 Pac. 711; *Wisner v. Richards*, 62 Wash. 429, 113 Pac. 1090, Ann. Cas. 1912D, 160; *Jamison v. Reilly*, 92 Wash. 538, 159 Pac. 699, Ann. Cas. 1918D, 160.

§ 39. — Rights of Subtenant: *Cuschner v. Westlake*, 43 Wash. 690, 86 Pac. 148.

§ 39-1. Abandonment: *Morris v. Healy Lumber Co.*, 46 Wash. 686, 91 Pac. 186; *Sandberg v. Light*, 55 Wash. 189, 104 Pac. 205.

§ 39-2. Forfeiture by Wrongful Act of Tenant: *Moore v. Twin City Ice & Cold Storage Co.*, 92 Wash. 608, 159 Pac. 779, Ann. Cas. 1918D, 540.

§ 40. Waiver of Forfeiture: *Pettygrove v. Rothschild*, 2 Wash. 6, 25 Pac. 907; *Carragher v. Bell*, 7 Wash. 81, 34 Pac. 469; *Batley v. Dewalt*, 56 Wash. 431, 105 Pac. 1029.

See also: *Andersonian Inv. Co. v. Wade*, 108 Wash. 373, 184 Pac. 327.

— **Notice to Quit—Successive Notices—Waiver:** *Hinkhouse v. Wacker*, 112 Wash. 253, 191 Pac. 881.

§ 10621. [8805.] Tenancy by Sufferance.

Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he occupied the premises, and shall forthwith on demand surrender his said possession to the owner or person who had the right of possession before said entry, and

all his right to possession of said premises shall terminate immediately upon said demand. [L. '67, p. 101, § 5; Cd. '81, § 2057; 1 H. C., § 2801.]

See § 812, *supra*.

Cited in 46 Wash. 690; 59 Wash. 301; 62 Wash. 13, 24, 25; 108 Wash. 179.

TENANCIES AT WILL AND AT SUFFERANCE: See Remington's Digest, Land. & Ten., §§ 45—47.

§ 45. **Nature and Incidents of Tenancy:** Chambers v. Hoover, 3 W. T. 107, 13 Pac. 466; Dolan v. Scott, 25 Wash. 214, 65 Pac. 190; Richards v. Redelsheimer, 36 Wash. 325, 78 Pac. 934.

§ 46. **Creation of Tenancy at Sufferance:** Meyer v. Beyer, 43 Wash. 368, 86 Pac. 661.

§ 47. **Termination:** Chambers v. Hoover, 3 W. T. 107, 13 Pac. 466; Dolan v. Scott, 25 Wash. 214, 65 Pac. 190; Morris v. Healy Lumber Co., 46 Wash. 686, 91 Pac. 186.

CHAPTER VII.

REGISTRATION OF LAND TITLES.

§ 10622. [8806.] Application by Whom Made—Agents—Corporations—Person Under Disability.

The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county auditor in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [L. '07, p. 693, § 1.]

Cited in 65 Wash. 682; 96 Wash. 276.

The title to this act is sufficiently comprehensive to include any encumbrance affecting the title, but not sufficient to entirely set aside and supersede the general lien laws: McMullen & Co. v. Croft, 92 Wash. 411, 159 Pac. 375 (overruled in *Id.*, 96 Wash. 275, 164 Pac. 930).

Validity of Torrens Act and proceedings thereunder. 12 Ann. Cas. 834; Ann. Cas. 1913C, 871; Ann. Cas. 1918E, 184; L. B. A. 1916D, 15.

Constitutionality of provisions of Torrens law for constructive notice. 11 A. L. B. 772.

§ 10623. [8807.] Lesser Estates—When Registered—Noted on Certificate of Title.

It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [L. '07, p. 693, § 2.]

Cited in 92 Wash. 414; 96 Wash. 277.

§ 10624. [8808.] Conditions Precedent — Adjudication or Possession — Vacant Lands.

No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said time; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [L. '07, p. 694, § 3.]

§ 10625. [8809.] Application—Contents of.

The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

(a.) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(b.) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.

(c.) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under section 10711 and subdivision A of section 10724.

(d.) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption.

(e.) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.

(f.) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and postoffice address of each occupant, and what estate he has or claims in the land.

(g.) Whether the land is subject to any lien or encumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and postoffice address of each holder thereof.

(h.) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or ex-

pectancy, and if any, set forth the name and postoffice address of every such person and the nature of his estate or claim.

(i.) In case it is desired to settle or establish boundary lines, the names and postoffice addresses of all the owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(j.) If the application is on behalf of a minor, the age of such minor shall be stated.

(k.) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [L. '07, p. 694, § 4.]

Subdivision C of this section as enrolled refers to §§ "83" and "96" of this act, where "82" and "95" were clearly intended; accordingly §§ 10711 and 10724 are substituted in this code, which see.

Cited in 66 Wash. 181.

§ 10626. [8810.] What Lands Application may Include.

Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [L. '07, p. 696, § 5.]

§ 10627. [8811.] Amendment of Application.

The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [L. '07, p. 696, § 6.]

§ 10628. [8812.] Form of Application—Title—Prayer.

The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND.

State of Washington, }
County of —, } ss.

In the Superior Court of the State of Washington in and for — County.

In the matter of the application of — to register the title to the land hereinafter described.

PETITION.

To the Honorable —, judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant, —, age, — years.

Residence, — (number and street, if any). Married to — (name of husband or wife).

Second. Applications made by —, acting as — (owner, agent or attorney). Residence, — (number, street).

Third. Description of real estate is as follows: — estate or interest therein is — and — subject to homestead.

Fourth. The land is — occupied by — (names of occupants), whose address is — (number street and town or city). The estate, interest or claim of occupant is —.

Fifth. Liens and encumbrances on the land —. Name of holder or owner thereof is —. Whose postoffice address is —. Amount of claim, \$—. Recorded, Book —, page —, of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are —, whose addresses are —, respectively. Character of estate, interest or claim is —.

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are —.

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

—, —,
(Applicant's signature.)

By —, agent, attorney, administrator or guardian.

Subscribed and sworn to before me this — day of —, A. D. 19—.

Notary Public in and for the State of Washington, residing at —.

[L. '07, p. 696, § 7.]

§ 10629. [8813.] To What Court—Powers of Court.

The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known, or unknown, and all liens and encumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [L. '07, p. 698, § 8.]

Cited in 66 Wash. 180.

§ 10630. [8814.] Who Registrars of Titles—Deputies—Rules.

The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions es-

tablished and given by the superior court having jurisdiction of the county in which they act. [L. '07, p. 698, § 9.]

§ 10631. [8815.] Bond—Filing.

Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [L. '07, p. 698, § 10.]

§ 10632. [8816.] Duties of Deputy—Vacancy—Bond.

Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [L. '07, p. 699, § 11.]

§ 10633. [8817.] Registrar may not Practice—Neglect of Duty, Liability for.

No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [L. '07, p. 699, § 12.]

§ 10634. [8818.] Examiner of Titles—Appointment—Salary.

The judges of the superior court in and for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon

the records of said court and the original shall be filed with the registrar. [L. '07, p. § 699, § 13.]

§ 10635. [8819.] Nonresidents to Appoint Agent—Service of Process.

If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and postoffice address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [L. '07, p. 700, § 14.]

§ 10636. [8820.] Application — Filing — Service — Caption — Docket and Record Entries.

The application shall be filed in the office of the clerk of the court to which the application is made and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "Land registration docket." The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, encumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, encumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [L. '07, p. 700, § 15.]

§ 10637. [8821.] Must File Certified Abstract of Title.

The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [L. '07, p. 701, § 15a.]

§ 10638. [8822.] Copy of Application, a Lis Pendens.

At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county auditor, and shall have the force and effect of a lis pendens. [L. '07, p. 701, § 16.]

§ 10639. [8823.] Examination of Title—Adverse Opinion—Election to Withdraw or Proceed.

Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and also as to all judgments against the applicant or through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [L. '07, p. 701, § 17.]

Cited in 66 Wash. 181.

§ 10640. [8824.] Title Good or Elects to Proceed—Summons Issued.

If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially, in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [L. '07, p. 702, § 18.]

§ 10641. [8825.] Plaintiffs—Defendants.

The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, encumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz.: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [L. '07, p. 702, § 19.]

§ 10642. [8826.] Service of Summons—Publication.

The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and said summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties," defendant, by publishing said summons in a newspaper of general circulation printed and published in the county where the application is filed, once in each week for three consecutive weeks, and such service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication,

provided that if any named defendant assents in writing to the registration as prayed for, which assent shall be indorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon said defendant shall be necessary. [L. '07, p. 702, § 20.]

§ 10643. [8227.] Clerk to Mail Copy—Further Notice—Expense and Proof of Service.

The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [L. '07, p. 703, § 20a.]

§ 10644. [8828.] Form of Summons.

The summons provided for in section 10642 hereof shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR REGISTRATION OF LAND.

State of Washington, }
County of —, } ss.

In the Superior Court of the State of Washington in and for the County of —. (Name of applicant), plaintiff, —, versus — (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein — defendants.

The State of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above-entitled application for registration of the following land situate in — county, Washington, to wit: (Description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness, —, clerk of said court and the seal thereof, at —, in said county and state, this — day of —, A. D. 19—.

(Seal.) — —, Clerk.

[L. '07, p. 703, § 20b.]

§ 10645. [8829.] Guardian Ad Litem for Minors and Others—Compensation.

The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of the said guardian shall be determined by the court, and paid as a part of the expense of the proceeding. [L. '07, p. 704, § 21.]

Cited in 102 Wash. 399.

§ 10646. [8830.] Who may Appear and Answer—Contents of Answer.

Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [L. '07, p. 704, § 22.]

§ 10647. [8831.] Judgment by Default—Examiner's Report not Conclusive.

If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein," all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [L. '07, p. 704, § 23.]

§ 10648. [8832.] Cause Set for Trial—Default—Referee and His Powers.

If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer in the manner provided in the preceding section. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [L. '07, p. 705, § 24.]

§ 10649. [8833.] Court Order Further Proof.

The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in the last preceding section, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [L. '07, p. 705, § 25.]

§ 10650. [8834.] Application Dismissed When Title not Proper for Registration.

If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [L. '07, p. 705, § 26.]

Cited in 66 Wash. 181, 182; 92 Wash. 414.

Under this section the superior court has no jurisdiction to try out conflicting titles and refuse the applicant a dismissal without prejudice, in a special pro-

ceeding to register land titles under the Torrens Act, in view of sections 10625 and 10639, supra: Krutz v. Dodge, 66 Wash. 178, 119 Pac. 188, Ann. Cas. 1913C, 869.

§ 10651. [8835.] Effect of Decree When Title Proper—Appeal.

If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. An appeal may be taken to the supreme court of the state of Washington, within the same time, upon like notice, terms and conditions as are now provided for the taking of appeals from the superior court to the supreme court of the state of Washington in civil actions. [L. '07, p. 706, § 27.]

§ 10652. [8836.] Rights of Persons not Served.

Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterward, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: Provided, however, that such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of someone in his behalf having knowledge of the facts, and provided, also, that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy

by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the filing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time, and in a like manner, as in the case of an original decree under this act, and not otherwise. [L. '07, p. 706, § 28.]

§ 10653. [8837.] Limitation of Actions.

No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such right of action to such person only as shall not because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [L. '07, p. 707, § 29.]

§ 10654. [8838.] Title Free from Encumbrances—Exceptions.

Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all encumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or encumbrances subsisting, namely:

First. Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.

Second. All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right of way or other easement, for ditches or water rights, upon, over or in respect to the land.

Third. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

Fourth. Such right of appeal, or right to appear and contest the application, as is allowed by this act. And,

Fifth. Liens, claims or rights, if any, arising or existing under the Constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [L. '07, p. 707, § 30.]

Cited in 65 Wash. 689.

§ 10655. [8839.] Decree—Form and Contents—Filing.

Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads and other encumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other matter or information properly to be determined by the court in pursuance of this act. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [L. '07, p. 708, § 31.]

§ 10656. [8840.] Interest Acquired After Filing—Must Appear as Defendant.

Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [L. '07, p. 709, § 32.]

§ 10657. [8841.*] Land must Remain Registered Unless Withdrawn.

The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration in the manner hereinafter provided. [L. '17, p. 219, § 1; L. '07, p. 709, § 33.]

Cited in 92 Wash. 413; 96 Wash. 276.

§ 10658. Withdrawal from Registration.

The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner here-

inafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [L. '17, p. 220, § 2.]

§ 10659. Application for Withdrawal.

The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of —, State of Washington:

I, (or we), —, the undersigned registered owner — in fee simple of the following described real property situated in the county of —, State of Washington, to wit: (here insert the description of the property), hereby make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand — and seal — this — day of —, 19—.

—, —,
Applicant's signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [L. '17, p. 220, § 3.]

§ 10660. Filing Fee—Registrar's Certificate of Withdrawal.

Upon the filing of such application and the payment of a fee of one dollar (\$1), the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, that — the owner (or owners) in fee simple of the following described lands situated in the county of —, state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; now, therefore, the title to said above-described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this — day of —, 19—.

—, —,
Registrar of Titles for — County.

[L. '17, p. 221, § 4.]

§ 10661. Certificate to be Recorded.

The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the

county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [L. '17, p. 221, § 5.]

§ 10662. Title Determined Prior to Withdrawal not Affected.

This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if said title still remained under said registry system. [L. '17, p. 221, § 6.]

§ 10663. [8842.] Registration by Registrar.

Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of titles," wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this act shall be deemed to include all memorials and notations thereon. [L. '07, p. 709, § 34.]

§ 10664. [8843.] Certificate of Registration—Contents—Form.

The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all encumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE.

Pursuant to order of the superior court of the state of Washington, in and for — county.

State of Washington, }
County of —, } ss.

This is to certify that A— B— of —, county of —, state of —, is now the owner of an estate (describe the estate) of, and in

(describe the land), subject to the encumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this — day of —, A. D. 19—.

— —, (Seal)
Registrar of Titles.

[L. '07, p. 710, § 35.]

§ 10665. [8844.] Owner's Certificate—Signature.

The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership," and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is practicable so to do, his receipt for the certificate of title, which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [L. '07, p. 711, § 36.]

§ 10666. [8845.] Tenants in Common—Duplicates.

Where two or more persons are registered owners as tenants in common or otherwise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [L. '07, p. 711, § 37.]

§ 10667. [8846.] Subsequent Certificates.

All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No. —," (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the — day of —, 19—, and entered in book — at page — of register." [L. '07, p. 711, § 38.]

§ 10668. [8847.] Issuance of Certificate When Division of Land—Union of Parcels.

A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide

such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [L. '07, p. 712, § 39.]

§ 10669. [8848.] When Certificate Takes Effect.

The certificate of title shall relate back to and take effect as of the date of the decree of registration. [L. '07, p. 712, § 40.]

§ 10670. [8849.] Certificates as Evidence—Variance.

The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal and also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. [L. '07, p. 712, § 41.]

§ 10671. [8850.] Registrar's Index—Forms Adopted by Court.

The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [L. '07, p. 712, § 42.]

§ 10672. [8851.] Tract Indexes—Alphabetical Indexes.

The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [L. '07, p. 713, § 43.]

§ 10673. [8852.] Dealings With Registered Land—Voluntary Conveyance, a Contract in Effect.

The owner of registered land may convey, mortgage, lease, charge or otherwise encumber, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and

sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [L. '07, p. 713, § 44.]

Cited in 65 Wash. 686.

One cannot be a bona fide purchaser of land registered under the Torrens Act until his conveyance is registered, although by this section and section 10654, supra, it appears that the act was for the protection of bona fide purchasers of registered land: *Brace v. Superior Land Co.*, 65 Wash. 681, 118 Pac. 910.

Under this section the first mortgage registered takes priority over other instruments, although previously executed: *Brace v. Superior Land Co.*, 65 Wash. 681, 118 Pac. 910.

A person who holds a prior mortgage of land registered under the Torrens Act, and who failed to have his instrument

registered because unwilling to pay the taxes necessary to obtain registration, is estopped by laches from asserting a priority over one who paid the taxes to secure registration of a new mortgage, given to revive the lien of an earlier mortgage omitted from the memorial in the registration decree by mutual mistake of the parties: *Brace v. Superior Land Co.*, 65 Wash. 681, 118 Pac. 910.

The superior court has no jurisdiction to try out conflicting titles and refuse the applicant a dismissal without prejudice, in a special proceeding to register land titles under the Torrens Act: *Krutz v. Dodge*, 66 Wash. 178, 119 Pac. 188, Ann. Cas. 1913C, 869.

§ 10674. [8853.] Instruments Recorded—Effect if Filed With Registrar.

Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering. [L. '07, p. 714, § 45.]

Cited in 92 Wash. 413; 96 Wash. 277.

Where title is registered under this act, a lien claimant must file his notice with the registrar of titles, under this section

(overruling *Id.*, 92 Wash. 411, 159 Pac. 375): *McMullen & Co. v. Croft*, 96 Wash. 275, 164 Pac. 930.

§ 10675. [8854.] Duties of Registrar—Time of Filing—Number—Index—Public Records.

The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a refer-

ence to the proper certificate of title. All records and papers, relating to registered land, in the office of the register of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [L. '07, p. 714, § 46.]

§ 10676. [8855.] Duplicates—Certified Copies—Fee.

Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [L. '07, p. 714, § 47.]

§ 10677. [8856.] New Certificate Only When Fee Passes—Registration of Lesser Interest—Procedure When Question as to Form of Memorial.

No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument (voluntary or involuntary), presented for registration, or where the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith. [L. '07, p. 715, § 48.]

§ 10678. [8857.] Production of Owner's Certificate Necessary for Registration of New Certificate, etc.

No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this act, or upon the

order of the court for cause shown; and whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [L. '07, p. 716, § 49.]

Cited in 65 Wash. 689.

§ 10679. [8858.] Duplicate Lost—Procedure to Obtain New Duplicate.

In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularity, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate," and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [L. '07, p. 716, § 50.]

§ 10680. [8859.] Conveyance of Registered Land.

An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled." The original certificate of title shall also be marked "Canceled." The registrar of titles shall thereupon enter in the register of titles, a new certificate of title to the grantee, and shall prepare and deliver to such grantee an owner's duplicate certificate. All encumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except in so far as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [L. '07, p. 716, § 51.]

§ 10681. [8860.] Certificate as to Payment of Taxes.

Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [L. '07, p. 717, § 52.]

§ 10682. [8861.] Burdens and Incidents, Registered Land Subject to.

Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way, any other rights or liabilities, created by law, applicable to unregistered land, except as otherwise expressly provided in this chapter, or any amendments hereof. [L. '07, p. 717, § 53.]

§ 10683. [8862.] Power of Attorney—Revocation of.

Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [L. '07, p. 718, § 54.]

§ 10684. [8863.] Power of Owner to Deal With Land.

The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [L. '07, p. 718, § 55.]

§ 10685. [8864.] Trust Deed, a Mortgage—Registration of Mortgages.

A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of titles, wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words,

"Mortgagee's duplicate," shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [L. '07, p. 718, § 56.]

§ 10686. [8865.] Memorial as to Dealings With Mortgage—Registration.

Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled." In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [L. '07, p. 719, § 57.]

§ 10687. [8866.] Charges on Land—Foreclosure—Lis Pendens.

All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or prior to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [L. '07, p. 720, § 58.]

Cited in 65 Wash. 685.

§ 10688. [8867.] Registration of Final Decree—New Certificate to Prevailing Party.

In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial

thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered owner of such land is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: Provided, however, that no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the registrar of titles, an order of the court directing the entry of such new certificate. [L. '07, p. 720, § 59.]

§ 10689. [8868.] Foreclosure—Order for Registration.

Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: Provided, however, no such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [L. '07, p. 721, § 60.]

§ 10690. [8869.] Petition to Court for New Certificate.

In all cases wherein, by this act, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [L. '07, p. 721, § 61.]

§ 10691. [8870.] Registration of Three Year Leases—Lessee's Duplicate.

Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words "Lessee's duplicate," shall be written or printed upon it in large letters diagonally across its face. [L. '07, p. 721, § 62.]

§ 10692. [8871.] Deeds in Trust, etc.—How Registered.

Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge

upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum or memorial shall be entered by the words, "in trust," or "upon condition," or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust condition, or limitation. [L. '07, p. 722, § 63.]

§ 10693. [8872.] New Trustee—Certificate.

When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [L. '07, p. 722, § 64.]

§ 10694. [8873.] Application of Trustee for Registration.

Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [L. '07, p. 723, § 65.]

§ 10695. [8874.] Situs, Place of Registration—Number and Description.

In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles, in the county in which the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [L. '07, p. 723, § 66.]

Cited in 92 Wash. 413; 96 Wash. 277, 279, 281.

§ 10696. [8875.] Attachments, Liens, etc.—Registration in Lieu of Filing.

All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding

or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or [on] unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [L. '07, p. 723, § 67.]

Cited in 92 Wash. 413, 416, 418; 96 Wash. 277.

Under this section and section 1134, providing that claims for mechanics' liens may be amended by order of court in so far as the interests of third persons are not affected, and section 1147, providing for a liberal construction of the lien laws, a claim for a mechanic's lien upon registered land, filed within the time and in the manner provided by general law for

unregistered lands, may, by order of court, be amended at the foreclosure trial and registered as required by the Torrens Act, where no rights of third persons are affected; in view of the further fact that the Torrens Act fixes no time limit for the registration of involuntary liens, and requires the same to be registered in the same office where they would be filed if upon unregistered lands: McMullen & Co. v. Croft, 92 Wash. 411, 159 Pac. 375.

§ 10697. [8876.] Name and Address of Attorney.

The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be indorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [L. '07, p. 724, § 68.]

§ 10698. [8877.] Judgments, a Lien When Filed.

A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [L. '07, p. 724, § 69.]

§ 10699. [8878.] Registration of Title Acquired by Execution, etc.

Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons acquiring title by an action or proceeding in foreclosure of mortgages. [L. '07, p. 724, § 70.]

§ 10700. [8879.] Cancellation of Memorial, When Action Dismissed, etc.

The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [L. '07, p. 724, § 71.]

§ 10701. [8880.] New Certificate After Time of Redemption—Petition and Order.

Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [L. '07, p. 725, § 72.]

§ 10702. [8881.] Descent or Devise—Procedure to Obtain Registration.

The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this act, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior court, in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after

such notice as it may order, and a hearing, may grant the petition: Provided, however, that the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [L. '07, p. 725, § 73.]

§ 10703. [8882.] Power of Court to Order Sale, or Mortgage, not Affected.

Nothing contained in this act shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [L. '07, p. 726, § 74.]

§ 10704. [8883.] Trustees, Masters, etc.—Filing of Certificate of Authority.

An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title; thereupon the registrar shall enter upon the register of titles, and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such land as if he were a registered owner. [L. '07, p. 726, § 75.]

§ 10705. [8884.] Eminent Domain—Fees—Reversion.

Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this act to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [L. '07, p. 727, § 76.]

§ 10706. [8885.] Registration, When Owner's Duplicate Certificate Withheld—Procedure.

In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [L. '07, p. 727, § 77.]

§ 10707. [8886.] Court may Refer to Examiner of Titles.

In all cases where, under the provisions of this act, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [L. '07, p. 728, § 78.]

§ 10708. [8887.] Examiner to Advise Registrar—Forms—Examination of Witnesses.

Examiners of titles shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office, and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [L. '07, p. 728, § 79.]

§ 10709. [8888.] Names and Addresses of Parties in Interest—Service.

Every writing and instrument required or permitted by this act to be filed for registration, shall contain or have indorsed upon it, the full name, place of residence and postoffice address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or postoffice address of such person shall be indorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given

in pursuance of the provisions of this act by the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail, to the person to be notified, if not a resident of the state of Washington, and his residence and postoffice address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: Provided, however, that the court may, in any case, order different or further service by publication or otherwise. [L. '07, p. 729, § 80.]

§ 10710. [8889.] Registration of Statement of Adverse Interest—Hearing—Procedure.

Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this act for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [L. '07, p. 729, § 81.]

§ 10711. [8890.] Assurance Fund—How Created.

Upon the original registration of land under this act, and also upon the entry of the certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of titles, one-tenth of one per cent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [L. '07, p. 730, § 82.]

§ 10712. [8891.] Investment of Assurance Fund.

All sums of money received by the registrar as provided for in the last section, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this act; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund

is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other municipalities of this state. [L. '07, p. 730, § 83.]

§ 10713. [8892.] Action for Recovery of Damages from Assurance Fund.

Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this act, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this act, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this act, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [L. '07, p. 731, § 84.]

§ 10714. [8893.] Parties Defendant—Judgment—Payment—County Attorney to Defend.

If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or of any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this act, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such person or persons aforesaid. In all such actions, where there are defendants other than the county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It

shall be the duty of the county attorney to appear and defend all such actions. If the funds in the assurance fund at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into said fund. [L. '07, p. 731, § 85.]

§ 10715. [8894.] When Assurance Fund not Liable—Maximum Amount.

The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against [under] this act to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [L. '07, p. 732, § 86.]

§ 10716. [8895.] Limitation of Action Against Assurance Fund.

No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this act, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of twenty-one years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [L. '07, p. 733, § 87.]

§ 10717. [8896.] Alterations, etc.—Change of Interests.

No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after such notice as it may order, to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon

a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: Provided, however, that this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [L. '07, p. 733, § 88.]

§ 10718. [8897.] Stealing Certificates or Duplicates—Grand Larceny.

Certificates of title or duplicate certificates entered under this act, shall be subjects of larceny, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of grand larceny, and punished accordingly. [L. '07, p. 734, § 89.]

§ 10719. [8898.] Swearing Falsely—Perjury.

Whoever knowingly swears falsely to any statement required by this act to be made under oath shall be guilty of perjury, and shall be liable to the statutory penalties therefor. [L. '07, p. 734, § 90.]

Cited in 83 Wash. 423.

§ 10720. [8899.] Penalty for Fraud.

Whoever fraudulently procures, or assists fraudulently [in] procuring or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this act, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both such fine and imprisonment, in the discretion of the court. [L. '07, p. 734, § 91.]

§ 10721. [8900.] Forgery a Felony—Penalty.

Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his signature; or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a felony, and upon conviction shall be imprisoned in the penitentiary not exceeding ten years, or fined not exceeding one thousand dollars, or both fine and imprisonment, in the discretion of the court. [L. '07, p. 735, § 92.]

§ 10722. [8901.] Penal Action not to Affect Civil Remedy.

No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [L. '07, p. 735, § 93.]

§ 10723. [8902.] Fees of Clerk of Court.

On the filing of any application for registration, the applicant shall pay to the clerk of the court, in counties having more than forty thousand population, the sum of three dollars; and in all other counties, the sum of five dollars, which shall be in full of all clerk's fees and charges in such proceeding in behalf of the applicant. Any defendant, on entering his appearance, shall pay to the clerk of the court, the sum of three dollars, which shall be in full of all clerk's fees in behalf of such defendant. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this act shall be paid for by the party on whose application the order for publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of the court, or the registrar of titles. [L. '07, p. 735, § 94.]

§ 10724. [8903.] Fees of Registrar.

The fees to be paid to the registrar of titles shall be as follows:

(a) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, one dollar, and twenty-five cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(b) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(c) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, three dollars.

(d) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(e) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and indorsements upon duplicate certificates, one dollar and fifty cents.

(f) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, one dollar.

(g) For filing of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(h) For the cancellation of each memorial, or charge, fifty cents.

(i) For each certificate showing the condition of the register, one dollar.

(j) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerks and county auditors for like service.

(k) For any other service required, or necessary to carry out this act, and not hereinbefore itemized, such fee or fees as the court shall determine and establish. [L. '07, p. 736, § 95.]

§ 10725. [8904.] Disposition of Fees—No Compensation to Registrar.

One-half of all fees provided for in subdivision (a) of section 10724, shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office; but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [L. '07, p. 737, § 96.]

§ 10726. [8905.] To be Construed Liberally.

This chapter shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is, that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do. [L. '07, p. 737, § 97.]

Cited in 65 Wash. 682.

Receivers. See §§ 740—744.

Reclamation. Of agricultural lands, see “Agriculture,” § 3004.

Of arid and granted lands, see “Lands of the State,” § 7922.

Recognizances. Forfeiture of, in criminal actions, see §§ 2231—2236.

Records. Of conveyances, see “Real Property,” § 10596.

As evidence, see §§ 1254—1263.

Restoration of lost records, see §§ 1270—1277.

Redemption. Of property sold under execution, see §§ 594—604.

Referees. See §§ 82—88.

Trial by, see §§ 369—377.

Reformatories. See “Prisons and Reformatories.”

Registrar. See “Health,” § 6020.

Registration. Of voters, see “Elections,” § 5115; “Education,” § 5025.

Of land titles, see “Real Property,” § 10622.

Of births and deaths, see “Health,” § 6011.

Regrade. Damages by, see “Municipal Corporations,” § 9333.

Religious Associations. See “Corporations,” § 3863.

REPLEVIN—SEARCH-WARRANTS.

Replevin. See §§ 707—717.

In justice's court, see §§ 1796—1806.

Reporter and Reports. Of supreme court, see "State Officers," § 11055.

Representatives. See "Legislature."

Revenue. See "Education," § 4932; "Taxation"; "Finance," § 5484.

Right of Way. See "Eminent Domain"; "Highways," § 6426; "Telephone and Telegraph Companies"; "Irrigation and Water Rights," § 7354; "Lands of the State," § 8081.

Rivers. See "Navigation"; "Waters."

Road Supervisors. See "Highways," § 6401.

Roads. See "Highways."

Sailors. See "Soldiers and Sailors."

Salaries. See "Counties," § 4200; "State Officers," § 10965.

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By executors and administrators, see §§ 1492—1516.

By guardians, see §§ 1582—1584.

Conditional sales, see "Chattel Mortgages and Conditional Sales," § 3779; "Railroads," § 10540.

Of county property, see "Counties," § 4007.

Of dairy products, see "Health."

Of feed stuffs, see "Inspection," § 7016.

Of fertilizers, see "Agriculture," § 2829.

Of game and game fish, see "Game."

Of liquors, see "Intoxicating Liquors"; "Education," § 5100.

Of lost property, see "Lost and Unclaimed Property," § 8418.

Of oyster lands, see "Lands of the State," §§ 8052, 8069.

Of property under execution, see §§ 578—604.

Of seeds, see "Agriculture," § 2810.

Of shoddy, see "Health," § 6132.

Of state lands, see "Lands of the State."

Of stocks in bulk, see "Frauds," § 5832.

Of tickets, see "Railroads," § 10496.

Sanitation. See "Health," § 6129.

Of hotels, see "Inspection," § 6868.

Satisfaction. Of instruments, see "Real Property," § 10604.

School Lands. See "Lands of the State."

Schools. See "Education," § 4518.

Search-warrants. See §§ 2227—2240-2.

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Secretary of State. See “State Officers,” § 10991.

Seeds. See “Agriculture,” § 2810.

Senators. See “Congressional Districts,” etc.; “Legislature.”

Session Laws. See “Legislature,” § 8196.

Setoff. See § 264.

Sheep. See “Animals,” § 3131.

Sheriffs. See “Counties,” § 4155.

Ships. See “Navigation.”

Shoddy. See “Health,” § 6132.

Shore Lands. See “Lands of the State,” § 7961.

Sidewalks. See “Municipal Corporations,” §§ 9155, 9331.

Sires. See “Animals,” § 3056.

SOLDIERS AND SAILORS.

TITLE LXXIV.

SOLDIERS AND SAILORS.

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CHAPTER I.

SOLDIERS' HOMES.

§ 10727. [8906.] Establishment of Soldiers' Home.

There shall be established in this state an institution under the name of Washington Soldiers' Home which institution shall be a home for honorably discharged Union soldiers, sailors, marines, soldiers of the Spanish-American war, and also members of the state militia disabled in the line of duty, and who are bona fide citizens of this state. [L. '90, p. 269, § 1; 1 H. C., § 1284; L. '01, p. 344, § 1.]

§ 10728. [8907.] Bond of Superintendent for Soldiers' Home.

The state board of control shall appoint a superintendent, who shall give a bond to the state in the sum of five thousand dollars, approved by the governor and filed in the office of the secretary of state, for the faithful performance of his duties. [L. '90, p. 271, § 7; 1 H. C., § 1289.]

See *infra*, § 10893, state board of control abolished.

Portions of this section omitted as superseded by § 10902, *infra*.

§ 10729. [8908-1.] Who may be Admitted to Home—Regulations.

All honorably discharged soldiers, sailors and marines who have served the United States government in any of its wars, and members of the state militia disabled while in the line of duty, may be admitted to the State Soldiers' Home at Orting under such rules and regulations as may be adopted by the state board of control: Provided, that such applicants have been actual bona fide citizens of this state for a period of three years at the time of their application, and are indigent and unable to earn a support for themselves. [L. '15, p. 305, § 1. Cf. L. '11, p. 621, § 1; L. '97, p. 306, § 5; L. '01, p. 344, § 2; L. '05, p. 291, § 1.]

§ 10730. [8908-2.] Colony of Soldiers' Home—Admission to—Soldiers' Widows.

There is hereby established what shall be known as the "Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting precinct and have been actual bona fide citizens of this state for a period of three years at the time of their application and are indigent and unable to earn a support for themselves and families, may be admitted to membership in said colony under such rules and regulations as may be adopted by the state board of control.

(1) All honorably discharged soldiers, sailors and marines, who have served the United States government in any of its wars, and members of the state militia disabled while in the line of duty, who were married and living with their wives on March 9, 1905, or who, since said date, have married widows of soldiers who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death: Provided, that such soldiers, sailors, and marines and mem-

bers of the state militia shall, while they are members of said colony, be living with their said wives.

(2) The widows of all soldiers who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the widows of all soldiers who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to support themselves and families, which widows have since the death of their said husbands become indigent and unable to earn a support for themselves: Provided, that such widows are not less than fifty years of age and were married and living with their said husbands on or before March 9, 1905, and have not been married since the decease of their said husbands to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. [L. '15, p. 305, § 2.]

§ 10731. [8908-3.] Regulations for Colony Members.

The members of the colony established in the preceding section shall, to all intents and purposes, be members of the said State Soldiers' Home and subject to all the rules and regulations thereof, except the requirements of fatigue duty, and each member shall, in accordance with rules and regulations adopted by the state board of control, be supplied with medical attendance and supplies from the home dispensary and rations not exceeding seven dollars per month in value and clothing not exceeding sixteen dollars per year in value. [L. '15, p. 306, § 3.]

§ 10732. [8908-4.] Admission to Veterans' Home.

All of the following persons who have been actual bona fide residents of this state for a period of three years at the time of their application and who are indigent and unable to earn a support for themselves and families may be admitted to the Washington Veterans' Home at Port Orchard under such rules and regulations as may be adopted by the state board of control:

(1) All honorably discharged soldiers, sailors and marines who have served the United States government in any of its wars, and members of the state militia disabled while in the line of duty, and the wives of such soldiers, sailors and marines and members of the state militia: Provided, that such wives were married to and living with their said husbands on March 9, 1905, or, if married to them since that date, were themselves members of a soldiers' home or colony in this state or entitled to admission thereto.

(2) The widows of all soldiers, sailors and marines and members of the state militia disabled while in the line of duty, who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and widows of all such soldiers, sailors and marines and members of the state militia, who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to earn a support for themselves and families, which widows have since the death of their said husbands become indigent and unable to earn

a support for themselves: Provided, that such widows are not less than fifty years of age and were married and living with their said husbands on or before March 9, 1905, and have not been married since the decease of their said husbands to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. [L. '15, p. 306, § 4.]

§ 10733. [8909.] Establishment of Branch of "Veterans' Home."

There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "Washington Veterans' Home," which branch shall be a home for honorably discharged soldiers, sailors and marines who have served the United States government in any of its wars, members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state, and also the wives of such soldiers, sailors and marines. [L. '07, p. 345, § 1.]

§ 10734. [8911.] Indian War Veterans Admitted.

Any man who served in the Indian war in the territory of Washington in 1855-56 as a volunteer, messenger, in the transportation service or otherwise in behalf of the territory of Washington or of the United States, shall hereafter be admitted to the Washington Soldiers' Home maintained at Orting in Pierce county, Washington, upon terms similar to those under which the veterans of other wars are now admitted to that institution, and submitting to the commandant and the board having charge of the said institution sufficient evidence to satisfy them that he has served in the said war as hereinbefore provided. [L. '01, p. 348, § 1.]

§ 10735. [8912.] United States Fund for Soldiers' Home.

The state treasurer is hereby authorized to receive any and all moneys appropriated or paid by the United States under the act of congress entitled "An act to provide aid to state or territorial homes for disabled soldiers and sailors of the United States," approved August 27, 1888, or under any other act or acts of congress for the benefit of such homes. Such moneys shall be kept in a separate fund to be designated upon the books of the state treasurer and state auditor as "United States fund for the maintenance of the soldiers' home," and said moneys shall be expended for the maintenance of the soldiers' home of this state in the same manner and under the same regulations as money appropriated by the legislature of this state for the maintenance of said home. [L. '97, p. 111, § 1.]

§ 10736. [8913.] Unexpended Balance shall not Lapse.

Any unexpended balance of said fund or of such moneys so received from the United States, now on hand or which may hereafter accrue, shall not lapse to the state, but shall be carried forward on the books of the said treasurer and auditor, and shall be taken into consideration in all appropriations by the state for the maintenance of such soldiers' home, and all appropriations by the state for such maintenance shall

be deemed to be in addition to any unexpended balance of such fund or of such money so received from the United States, and in addition to the moneys to be thereafter so received from the United States. [L. '97, p. 112, § 2.]

CHAPTER II.

COUNTY AID.

§ 10737. [8914.*] County Commissioners to Make Provision for Aid.

For the relief of indigent and suffering Union soldiers, sailors and marines who served in the Civil War, in the war of Mexico or in any of the Indian wars in the United States, the Spanish-American war and Philippine insurrection, soldiers, sailors and marines who served in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy or marine corps of the United States in any other foreign war, insurrection, or expedition, which service shall be governed by the issuance of a campaign badge by the government of the United States of America, and their families or the families of those deceased, who need assistance in any city, town or precinct in this state, the board of commissioners of the county in which said city, town or precinct is situated shall provide such sum or sums of money as may be necessary, to be drawn upon by the commander and quartermaster, or commander and adjutant of any post of the Grand Army of the Republic, camp of the United Spanish War Veterans, Veterans of Foreign Wars or post of the American Legion in said city or town upon recommendation of the relief committee of said post or camp in the same manner as is now provided by law for the relief of the poor: Provided, said soldier, sailor or marine, or the families of those deceased, are and have been residents of the state for at least twelve months, and the orders of said commander and quartermaster, or commander and adjutant shall be the proper voucher for the expenditure of said sum or sums of money. [L. '21, p. 141, § 1; L. '88, p. 208, § 1; 1 H. C., § 1290; L. '93, p. 60, § 1; L. '07, p. 104, § 1; L. '19, p. 191, § 1.]

§ 10738. [8915.*] Nearest Post or Camp may Receive.

If there be no post of the Grand Army of the Republic, camp of the United Spanish War Veterans, Veterans of Foreign Wars or post of the American Legion in any precinct in which it should be granted, the county commissioners of the county in which such precinct is, may accept and pay the orders drawn, as hereinbefore provided, by the commander and quartermaster, or commander and adjutant, of any post of the Grand Army of the Republic, camp of the United Spanish War Veterans, Veterans of Foreign Wars or post of the American Legion located in the nearest city or town, upon the recommendation of a relief committee who shall be residents of the said precinct in which the relief may be furnished. [L. '21, p. 142, § 2; L. '07, p. 104, § 2. Cf. '88, p. 208, § 2; 1 H. C., § 1291.]

§ 10739. [8916.*] Notice by Post of Intention to Relieve Veterans—Contents.

Upon the passage of this act the commander of any post of the Grand Army of the Republic, camp of the United Spanish War Veterans, Veterans of Foreign Wars or post of the American Legion which shall undertake the relief of indigent veterans and their families, as hereinbefore provided, before the acts of said commander and quartermaster, or commander and adjutant may become operative in any city or precinct, shall file with the county auditor of such county, notice that said post or camp intends to undertake such relief as is provided by this act. Such notice shall contain the names of the relief committee of said post or camp in such city or precinct, and the commander of said post or camp shall annually thereafter during the month of October file a similar notice with said auditor, and also a detailed statement of the amount of relief furnished during the preceding year, with the names of all persons to whom such relief shall have been furnished, together with a brief statement in each case from the relief committee upon whose recommendations the orders were drawn. [L. '21, p. 142, § 3; L. '88, p. 209, § 3; 1 H. C., § 1292; L. '07, p. 105, § 3.]

§ 10740. [8917.*] Bond may be Required.

The county commissioners may require of the commander and quartermaster, or commander and adjutant, of any post of the Grand Army of the Republic, camp of the United Spanish War Veterans, Veterans of Foreign Wars or post of the American Legion undertaking to distribute relief under this act a bond with sufficient and satisfactory sureties for the faithful and honest discharge of their duties under this act. [L. '21, p. 143, § 4; L. '88, p. 209, § 4; 1 H. C., § 1293; L. '07, p. 105, § 4.]

§ 10741. [8918.*] Care of Indigent Soldiers and Marines.

County commissioners are hereby prohibited from sending indigent Union, Spanish-American war soldiers, sailors and marines, soldiers, sailors and marines who have served the United States in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy, or marine corps of the United States in any other foreign war, insurrection or expedition, which service shall be governed by the issuance of a campaign badge by the government of the United States of America (or their families or the families of the deceased), of the classes of persons mentioned in section 10737, to any almshouse (or orphan asylum) without the concurrence and consent of the commander and relief committee of the post of the Grand Army of the Republic, camp of the United Spanish War Veterans, Veterans of Foreign Wars or post of the American Legion, as provided in sections 10737 and 10738. Indigent veterans shall, whenever practicable, be provided for and relieved at their homes in such city, town or precinct in which they shall have a residence, in the manner provided in sections 10737 and 10738. Indigent or disabled veterans of the classes specified in section 10737, who are

not insane and have no families or friends with whom they may be domiciled, may be sent to any soldiers' home. [L. '21, p. 143, § 5; L. '88, p. 209, § 5; L. '07, p. 105, § 5; L. '19, p. 192, § 5.]

§ 10742. [8919.*] Tax Levy to Create Fund.

The boards of county commissioners of the several counties in this state shall levy, in addition to the taxes now levied by law, a tax not less than one-twentieth of one mill, and not greater than two-fifths of one mill, upon the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating a fund for the relief of honorably discharged soldiers, sailors and marines who served in the Civil War, in the war of Mexico or in any of the Indian wars, or the Spanish-American war or the Philippine insurrection, soldiers, sailors and marines who served in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy, or marine corps of the United States in any other foreign war, insurrection or expedition, which service shall be governed by the issuance of a campaign badge by the government of the United States of America, and the indigent wives, widows and minor children of such indigent or deceased soldiers, sailors and marines, to be disbursed for such relief by such board of county commissioners. [L. '21, p. 145, § 7; L. '90, p. 210, § 7; 1 H. C., § 1296; L. '93, p. 61, § 2; L. '07, p. 106, § 7; L. '19, p. 194, § 7.]

§ 10743. [8920.*] Payment of Rent of Post or Camp.

Any post of the Grand Army of the Republic, camp of United Spanish War Veterans, Veterans of Foreign Wars or post of the American Legion which has qualified to accept relief from the Indigent Soldiers' Relief Fund of any county may draw upon said county fund for the payment of the rent of its regular meeting place: Provided, that no post or camp shall be allowed to draw on such fund for this purpose to exceed the sum of one hundred dollars in any one year, or in any amount for hall rental where said post or camp is furnished quarters by the state or by any municipality.

Before such claims are ordered paid by the county commissioners, the commander of such posts shall file a proper claim each month with the county auditor for such rental. [L. '21, p. 146, § 8; L. '15, p. 244, § 1. Cf. L. '09, p. 116, § 1.]

CHAPTER III.

SOLDIERS' BONUS.

§ 10743-1. Qualifications of Recipients—Amount—Payment.

There shall be paid to each person who was regularly called, enlisted, drafted, inducted or commissioned and who served on active duty in the army, navy, or marine corps of the United States between the sixth day of April, 1917, and the eleventh day of November, 1918; and

to each person who, being a citizen of the United States at the time of his entry therein, served on active duty in the naval, military or air forces of any of the governments associated with the United States during the war with the central allied powers between the sixth day of April, 1917, and the eleventh day of November, 1918; and who, at the time of his call, enlistment, induction, commission or service, was a bona fide resident of the state of Washington, the sum of fifteen dollars (\$15) for each and every month or major fraction thereof of active duty performed subsequent to April 6, 1917, and prior to November 11, 1919: Provided, that if any such person shall have borrowed money from the Veteran's Welfare Commission and shall have failed to repay said money, then the amount thereof shall be deducted from any sums payable to any such person under this act and said loan shall thereupon be canceled and discharged: Provided, further, that persons who have received extra compensation from any other state, or nation other than the United States for such active service shall not be entitled to compensation under this act unless the amount of compensation so received is less than they would be entitled to hereunder, in which event they shall receive the difference between the compensation allowable under this act and the extra compensation already received from such other state or nation: Provided, further, that persons who have received greater compensation than the regular pay of the army, navy or marine corps and commutation for quarters and subsistence, shall not be entitled to receive compensation under this act unless the amount of extra compensation so received is less than they would be entitled to hereunder, in which event they shall receive the difference between the compensation allowable under this act and such extra compensation. In case of the death of any such person while in such service an equal amount shall be paid to his surviving widow, if not remarried at the time compensation is requested, or in case he left no widow and left children, then to his surviving children, or in the event he left no widow or children, then to his surviving parent or parents, if actually dependent upon such deceased person for support. Persons of the female sex, or their surviving children or parents, who are in all other respects within the terms of this act, shall be entitled to compensation thereunder. [L. '20, p. 7, § 1.]

Cited in 113 Wash. 571.

This act providing a payment of fifteen dollars a month to each person in active service during the World War, the appropriation being made as compensation for the service, is the recognition of a moral obligation and provides for the expenditure of money for a public purpose which may be met by general taxation: State ex

rel. Hart v. Clausen, 113 Wash. 570, 194 Pac. 793.

Constitutionality of statutes providing for bounty or pension for soldiers. *Ann. Cas.* 1913B, 951; *Ann. Cas.* 1915C, 282; 7 *A. L. R.* 1636; 13 *A. L. R.* 587; 15 *A. L. R.* 1359.

Construction and effect of soldiers' bounty laws. 13 *A. L. R.* 594.

§ 10743-2. Persons Disqualified.

The word "person," as used in section 10743-1, shall not include persons, who, during the period of their service, refused, on conscientious, political or other grounds, to subject themselves to full military discipline or unqualified service, or who, while in such service, were separated therefrom under circumstances amounting to a dishonorable discharge

and who have not subsequently been officially restored to an honorable status, and such person shall not be entitled to the benefits of this act. [L. '20, p. 9, § 2.]

§ 10743-3. Auditor's Certificate—Record of Service—Proof.

All disbursements required by this act for compensation shall be made upon the presentation of a certificate upon a form to be prescribed by the state auditor, which certificate shall be duly verified by the claimant under oath and shall set forth the name, residence at the time of entry into the service, date of enlistment, induction or commission, date of discharge or release from active service if the claimant is not on active duty, a statement that the claimant during the period for which compensation is allowed did not refuse to subject himself to full military discipline and unqualified service and that he has not been separated from the service under circumstances amounting to a dishonorable discharge, and such further information as the state auditor may require. Such certificate shall be presented to the state auditor or his representative together with an honorable discharge or release from active service, or in case of its loss a properly authenticated record of service, or in the event that the claimant is still in the service a properly authenticated record of all active service performed by the claimant subsequent to April 6, 1917, and prior to November 11, 1919, or if the same be presented by the widow, child, or parents of a deceased veteran, then with proper evidence of death, together with a properly authenticated record of service, and the state auditor shall indorse upon such discharge, release or record of active service, a statement that such discharge, release or record of active service was made the basis of the application, and shall return such discharge or release or record of active service to the claimant and shall forthwith draw his warrant in the name of the claimant upon the Veterans' Compensation Fund for an amount equal to fifteen dollars for each and every month of active service, or major fraction thereof, between the sixth day of April, 1917, and the eleventh day of November, 1919, and the state treasurer shall pay such warrants from the Veterans' Compensation Fund. In cases where application for compensation is made by the widow, children or parents of a deceased veteran, such person shall furnish the same information as though the application were made by the deceased veteran, and the state auditor shall prepare an appropriate form of certificate to cover such cases. Compensation allowed to the children of deceased veterans shall be paid to the guardians of such children, which guardians, if appointed by the courts of this state, shall serve without compensation and in the discretion of the court without bond, and it shall be the duty of every attorney in this state to appear in the courts or render any other necessary legal assistance in behalf of such children in so far as the provisions of this act are concerned, without compensation, and no public officer shall collect any fees in any proceedings brought in behalf of such children to secure compensation under this act.

The state auditor is empowered to make such additional reasonable requirements from applicants as are necessary to prevent fraud or the

payment of compensation to persons not entitled thereto. [L. '20, p. 9, § 3.]

§ 10743-4. Forms—Duties of Officers.

The state auditor shall furnish free of charge, upon application therefor, the necessary form of certificate to all persons entitled thereto, and may establish at different points within the state of Washington, offices at which there shall be kept on file for the use of persons covered by this act, a sufficient number of forms of certificate so that there may be no delay in the payment of this compensation. The state auditor may authorize the county auditor or county clerk, or both, of any county of the state to act for him in receiving applications under the provisions of this act, and shall furnish such persons with the proper certificates to enable them to accept such applications. The state auditor is hereby authorized and directed to procure such printing and office supplies and equipment, and to employ such persons as may be necessary in order to properly carry out the provisions of this act, and all expenses incurred by him in the administration of this act shall be paid by warrants drawn upon the Veterans' Compensation Fund.

The adjutant-general shall advise with and assist the state auditor in the performance of the duties of the auditor under this act, and when so called upon the adjutant-general may employ such persons and incur such expenses as may be necessary, such expenses to be paid by warrants drawn upon the Veterans' Compensation Fund.

The auditor and the adjutant-general may require persons employed by them under this act to furnish good and sufficient surety bonds to the state of Washington for the faithful performance of their duties and the premiums upon said bonds shall be payable from the Veterans' Compensation Fund. [L. '20, p. 10, § 4.]

§ 10743-5. Anticipatory Warrants.

The state auditor may in his discretion issue warrants under the provisions of this act in anticipation of the sale of the bonds herein authorized. [L. '20, p. 11, § 5.]

§ 10743-6. Bonds—Issue—Interest—Sale of Bonds.

For the purpose of providing means for the payment of compensation hereunder and for paying the expenses of administration, there shall be issued and sold bonds of the state of Washington in the sum of eleven million dollars (\$11,000,000): Provided, that if the proceeds of the sale of such bonds be insufficient to pay the compensation herein allowed, then sufficient additional bonds to pay such compensation shall be issued and sold. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state board of finance. The state board of finance may, in its discretion, provide for the issuance of coupon or registered bonds to be dated, issued, and sold from time to time and in such amounts as may be necessary to make the payments provided for by this act. Each of such bonds shall be made payable at any time not exceeding twenty years from the date of its issuance,

with such reserved rights of prior redemption as the state board of finance may prescribe, to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state; and any coupons attached to such bonds shall be signed by the same officers, whose signatures thereon may be in facsimile; and such bonds shall bear interest at a rate not to exceed six per cent per annum, which bonds shall be sold for not less than par. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York, as to principal alone or as to both principal and interest, under such regulations as the state treasurer may prescribe. Said bonds shall be in a form embodying an absolute promise of the state of Washington to pay both principal and interest in gold coin of the United States of present standard of value, at such place or places as the state board of finance may provide, and shall be in such denominations as may be prescribed by said board. All bonds issued under the provisions of this act may be sold in such manner and in such amounts and at such times and on such terms and conditions as the state board of finance may prescribe: Provided, that if said bonds are sold to any persons other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state board of finance to cause such sale to be advertised in such manner as it shall deem sufficient.

Bonds issued under the provisions of this act shall be a legal investment for any of the funds of the state, including the permanent school fund, any higher educational funds, and accident fund of the industrial insurance department. [L. '20, p. 11, § 6.]

§ 10743-7. Veterans' Compensation Fund.

The money arising from the sale of each issue of bonds shall be deposited in the state treasury to the credit of a special fund to be known as the "Veterans' Compensation Fund," which shall be used for payment of the compensation provided in this act and for paying the expenses of the administration thereof. For the purpose of carrying out the provisions of this act there is hereby appropriated from the Veterans' Compensation Fund the sum of eleven million dollars (\$11,000,000). [L. '20, p. 13, § 7.]

§ 10743-8. Retirement Fund.

For the purpose of creating a retirement fund for the retirement of such bonds upon maturity and the payment of interest thereon as it falls due, the proper state and county officers shall levy and collect a tax of one mill upon each dollar of the taxable property in the state for the year 1921 and for each year thereafter: Provided, that if said tax be insufficient then the proper state and county officers are authorized and directed to levy and collect such additional taxes as may be necessary for the payment of interest upon said bonds and the retirement of the principal thereof upon maturity. All moneys derived from such tax shall be paid into the state treasury and credited to a fund to be known as the "Veterans' Compensation Bond Retirement Fund." [L. '20, p. 13, § 8.]

§ 10743-9. Free Official Service—Discounting Certificates.

No charge made by any agent, notary public or attorney for any service in connection with obtaining the allowance as provided for by this act shall be recognized by the state and any person who, for a consideration, discounts or attempts to discount, or for a consideration advances money upon any certificate or certificates issued pursuant to the terms of this act, shall be guilty of a gross misdemeanor. [L. '20, p. 14, § 9.]

§ 10743-10. False Claims Punishable.

Any person who, with intent to defraud, subscribes to any false oath or makes any false representation, either in the execution of the certificates provided for by this act, or who, with intent to defraud, presents to the state auditor, or to any other officer of the state, any certificate for the purpose of obtaining funds provided by this act which do not in fact belong to such person, or makes any false representations in connection with obtaining any funds under the terms of this act, shall be guilty of a felony. [L. '20, p. 14, § 10.]

§ 10743-11. Method not Exclusive.

The legislature may provide additional means for raising moneys for the payment of the interest and principal of said bonds and this act shall not be deemed to provide an exclusive method for such payment. [L. '20, p. 14, § 11.]

§ 10743-12. Constitutionality.

If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. [L. '20, p. 14, § 12.]

CHAPTER IV.**VETERANS' WELFARE COMMISSION.****§ 10744. Transfer of all Property to American Legion.**

The Veterans' Welfare Commission of the state of Washington shall on or before the twenty-eighth day of February, 1921, transfer to the State Adjutant Finance Officer of the American Legion, Department of Washington all moneys and personal property of every kind and description now in its possession or control and shall take receipts therefor and file such receipts with the proper state officer or department: Provided, that the records and files of the Veterans' Welfare Commission, including all promissory notes or other evidences of indebtedness due and owing to the state or said commission, shall be transmitted to the state auditor. [L. '21, p. 99, § 1.]

§ 10745. Use of Money and Property—Preferences.

The moneys and personal property so transferred shall be used by the proper governing body of the American Legion, Department of Washington, for the relief of persons who served in the military, naval or air forces of the United States or its allies in the war with the Central Allied

Powers and who shall be in necessitous circumstances through disability, lack of employment or any other cause. In such cases preference shall be given to the relief of veterans who shall be found to be suffering from some disability incurred in line of duty and for whom no provision has been made by the federal government. [L. '21, p. 99, § 2.]

§ 10746. Payment of Loans and Advancements.

All loans or advancements heretofore made by the Veterans' Welfare Commission under the provisions of chapter 9, Laws of 1919, shall be payable to the state auditor from and after the first day of March, 1921, but in such cases the state auditor shall transmit the amount thereof to the State Adjutant Finance Officer of the American Legion, Department of Washington, to be expended for the purposes specified in section 10745. [L. '21, p. 99, § 3.]

"Chapter 9," referred to, repealed. See L. '21, p. 100, § 4.

§ 10747. Record of Expenditures.

The American Legion, Department of Washington, shall keep proper records of all expenditures which shall be audited by the director of efficiency. [L. '21, p. 100, § 6.]

CHAPTER V.

PENSION FOR INDIAN WAR VETERANS.

§ 10749. [8921.] Appropriation for Pensions.

There [shall] be and hereby is appropriated out of the general funds in the treasury of the state of Washington the sum of thirty thousand dollars (\$30,000), or so much thereof as shall be necessary, to pay the veterans of the Indian wars of 1855 and 1856, who served under and by virtue of the directions of the officers of Washington territory, for their said service, under the conditions and upon the terms hereinafter provided. [L. '09, p. 862, § 1; L. '09, Ex. Sess., p. 68, § 1.]

§ 10750. [8922.] Pension Allowances.

Each noncommissioned officer and private who served the territory of Washington in the Indian wars of 1855 and 1856 shall be entitled for such service [to] the sum of two dollars per day for himself, and all commissioned officers shall receive such sum as was paid to officers of the same rank of the army of the United States at said time: Provided, that any amount paid on account thereof by the United States shall be deducted therefrom. [L. '09, p. 862, § 2; L. '09, Ex. Sess., p. 68, § 2.]

§ 10751. [8923.] Presentation of Claims—Warrants Issued.

The claim for such services, verified by the claimant, shall be presented to the adjutant-general, who shall, without additional cost to the state, examine and pass upon the same, and may require additional and corroborative evidence in support thereof; and he shall prepare, certify and file with the state auditor proper vouchers showing the amount payable to the claimant under the provisions of this chapter.

Thereupon the state auditor shall issue his warrant for the amount found due to the claimant: Provided, that nothing in this chapter shall be construed to authorize the payment of any claim to any heir or beneficiary of the claimant for services during the Indian wars. [L. '09, p. 862, § 3; L. '09, Ex. Sess., p. 69, § 3.]

Cited in 57 Wash. 268, 271.

This section granting pay for services performed by the Indian war veterans is a gift in the nature of a pension, limited by its terms to the veteran in propria persona, and in case of his death pending

his application, payment cannot be made to his heir or personal representative; since no provision is made therefor: Whitaker v. Clausen, 57 Wash. 268, 106 Pac. 745, 107 Pac. 832.

§ 10752. [8924.] Indian Wars Included.

This chapter, so far as the same relates to the pay of volunteers, shall be construed so as to apply to all who have been in the service of the territory of Washington, now state of Washington, during said Indian wars of 1855 and 1856, and it shall extend to the services of the regiment of the Washington militia while the same was in actual service during said war. [L. '09, p. 862, § 4; L. '09, Ex. Sess., p. 69, § 4.]

CHAPTER VI.

EMPLOYMENT OF, AND LICENSES TO, UNION VETERANS.

§ 10753. [8925.*] Preference in Employment of Guaranteed.

In every public department, and upon all public works of the state of Washington, and of any county thereof, honorably discharged union soldiers and sailors, and their widows, and honorably discharged soldiers and sailors, and their widows, of the Spanish-American war and the Philippine insurrection, and of the war with Germany and her allies, and their widows, shall be preferred for appointment and employment; age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity necessary to discharge the duties of the position involved. [L. '19, p. 54, § 1; L. '15, p. 356, § 1. Cf. L. '95, p. 166, § 1.]

§ 10754. [8926.] Penalty.

And all officials and other persons having power to appoint to or employment in the public service set forth in the last preceding section, are charged with a faithful compliance with its terms, both in letter and in spirit, and a failure therein shall be a misdemeanor, and on conviction shall be punished by a fine of not less than five dollars nor more than twenty-five dollars. [L. '95, p. 166, § 2.]

§ 10755. [8927.] Right to Peddle Without License.

Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state and a veteran of the late rebellion, shall have a right to peddle, hawk, vend and sell goods, other than his own manufacture and production, without paying for the license as now provided by law, by those who engage in such business; but any such soldier, sailor or marine may en-

gage in such business by procuring a license for that purpose as provided in section 10756. [L. '03, p. 92, § 1.]

See Const., Art. I, § 12.

§ 10756. [8928.] Issuance of License.

On presentation to the county auditor of the county in which any such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, in the war of the late rebellion, such county auditor shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of a peddler, as provided in section 10755. [L. '03, p. 92, § 2.]

CHAPTER VII.

BURIAL.

§ 10757. [8929.*] Burial of Indigent Soldiers—Expenses Paid by County.

It shall be the duty of the board of county commissioners in each of the counties in this state to designate some proper authority other than the one designated by law for the care of paupers and the custody of criminals who shall cause to be interred at the expense of the county the body of any honorably discharged soldier, sailor or marine who served in the army or the navy of the United States of America during the late Civil War or in the war with Mexico or in any of the Indian wars that occurred in the state of Washington, or the Spanish-American war and the Philippine insurrection, soldiers, sailors and marines who served in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy or marine corps of the United States in any other foreign war, insurrection or expedition which service shall be governed by the issuance of a campaign badge by the government of the United States of America, and the wives or widows of such soldiers, sailors or marines, who shall hereafter die without leaving means sufficient to defray funeral expenses; and when requested so to do by the commanding officer of any post of the Grand Army of the Republic, camp of the United Spanish War Veterans, Veterans of Foreign Wars or American Legion, or the relief committee of any such posts or camps: Provided, however, that such interment shall not cost more than one hundred dollars. If the deceased has relatives or friends who desire to conduct the burial of such deceased person, then upon request of said commander or relief committee a sum not to exceed one hundred dollars shall be paid to said relatives or friends, by the county treasurer, upon due proof of the death and burial of any person provided for by this section and proof of expenses incurred. [L. '21, p. 144, § 6; L. '88, p. 209, § 6; 1 H. C., § 1295; L. '99, p. 160, § 1; L. '07, p. 106, § 6; L. '17, p. 195, § 1; L. '19, p. 193, § 6.]

§ 10758. [8930.] Burial of Deceased Volunteers—Duty of Adjutant-general.

It shall be the duty of the adjutant-general of this state to make suitable provision for the interment of the remains of all deceased

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Washington volunteers returned to this state by the United States government, and whenever possible, he shall communicate with the relatives or friends of such deceased volunteers, and when practicable be governed by their desires as to the disposition of such remains. In case the adjutant-general should fail to receive directions from relatives or friends of any deceased volunteer it shall be his duty to inter such remains in the state cemetery at Orting, Washington, or such other public cemetery as in his judgment may be deemed advisable. [L. '99, p. 176, § 1.]

This section was passed on the same day that the previous section was amended, and by § 2 of the act an appropriation was made.

Soldiers' Home. See "Soldiers and Sailors."

Sons of Veterans. See "Militia," § 8604.

Special Assessments. See "Municipal Corporations"; "Lands of the State," § 8125.

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Of control, see "State and State Boards," § 10899.

Of education, see "Education," § 4525.

Of examiners of physicians, dentists, etc., see "Physicians"; "Licenses."

Of equalization, see "Taxation."

Of finance, see "Finance."

Of forest commissioners, see "Forests and Forest Fires," § 5782.

Of geological survey, see "Geological Survey," § 5993.

Of health, see "Health," § 6001.

Of highway commissioners, see "Highways," § 6759.

Of medical aid, see "Workmen's Compensation."

Of park commissioners, see "Highways."

Of voting machine examiners, see "Elections," § 5301.

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Of tax commissioners, see "Taxation," § 11087.

To promote uniformity of legislation, see "Legislature," § 6948.

STATE BOARDS AND APPOINTIVE OFFICERS.

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CHAPTER I.

ADMINISTRATIVE CODE.

§ 10759. Designation.

This act shall be known and may be cited as the Administrative Code. [L. '21, p. 12, § 1.]

§ 10760. State Departments Created.

There shall be, and are hereby created, departments of the state government which shall be known respectively as, (1) the department of public works, (2) the department of business control, (3) the department of efficiency, (4) the department of taxation and examination, (5) the department of health, (6) the department of conservation and development, (7) the department of labor and industries, (8) the department of agriculture, (9) the department of licenses, and (10) the department of fisheries and game; which departments shall be charged respectively with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide. [L. '21, p. 12, § 2.]

§ 10761. Chief Executive Departmental Officers—Appointment.

There shall be a chief executive officer of each of the departments of the state government created by this act, to be known respectively as, (1) the director of public works, (2) the director of business control, (3) the director of efficiency, (4) the director of taxation and examination, (5) the director of health, (6) the director of conservation and development, (7) the director of labor and industries, (8) the director of agriculture, (9) the director of licenses, and (10) the director of fisheries and game; who shall be appointed by the governor with the consent of the senate, and hold office at the pleasure of the governor: Provided, that, if the senate be not in session when this act takes effect, and in case a vacancy occurs while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he shall present to the senate his nomination for the office. [L. '21, p. 12, § 3.]

§ 10762. Administrative Committees.

There shall be, and are hereby created, administrative committees of the state government, which shall be known respectively as, (1) the state equalization committee, (2) the state finance committee, (3) the state highway committee, (4) the state capitol committee, (5) the state archives committee, (6) the state parks committee, (7) the state voting machine committee, (8) the state law library committee, and (9) the state library committee. [L. '21, p. 13, § 4.]

§ 10763. Equalization Committee.

The governor, the state auditor, and the state treasurer, ex officio, shall constitute the state equalization committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform

all the duties now vested in, and required to be performed by, the state board of equalization. [L. '21, p. 13, § 5.]

§ 10764. Finance Committee.

The state treasurer, the state auditor, and the governor, ex officio, shall constitute the state finance committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the state board of finance. [L. '21, p. 13, § 6.]

§ 10765. Highway Committee.

The governor, the state auditor, and the state treasurer, ex officio, shall constitute the state highway committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the state highway board. [L. '21, p. 13, § 7.]

§ 10766. Capitol Committee.

The governor, the state auditor, and the commissioner of public lands, ex officio, shall constitute the state capitol committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the state capitol commission. [L. '21, p. 14, § 8.]

§ 10767. Archives Committee.

The secretary of state, the superintendent of public instruction, and the state insurance commissioner, ex officio, shall constitute the state archives committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the public archives commission. [L. '21, p. 14, § 9.]

§ 10768. Parks Committee.

The commissioner of public lands, the secretary of state, and the state treasurer, ex officio, shall constitute the state parks committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the state board of park commissioners. [L. '21, p. 14, § 10.]

§ 10769. Voting Machine Committee.

The secretary of state, the superintendent of public instruction, and the state insurance commissioner, ex officio, shall constitute the state voting machine committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the state board of voting machine examiners. [L. '21, p. 14, § 11.]

§ 10770. Law Library Committee.

The chief justice of the supreme court, the attorney general, and the secretary of state, ex officio, shall constitute the state law library committee, which shall have the power and it shall be its duty, to exercise all

the powers and perform all the duties relating to the state law library now vested in, and required to be performed by, the state library commission. The state law librarian shall be the secretary of the state law library committee. [L. '21, p. 14, § 12.]

§ 10771. Library Committee.

The superintendent of public instruction, the commissioner of public lands, and the state treasurer, ex officio, shall constitute the state library committee, which shall have the power, and it shall be its duty, to exercise all the powers and perform all the duties relating to the state library, except the powers and duties relating to the state law library, now vested in, and required to be performed by, the state library commission, and shall exercise all the powers and perform all the duties now vested in, and required to be performed by, the state library advisory board. [L. '21, p. 15, § 13.]

§ 10772. Administrative Board—Rules Governing.

The governor and the directors of the departments of the state government created by this act shall constitute the administrative board. The governor shall be chairman of the board. The board shall have power to adopt general rules and regulations for the transaction of the business of the board, and provide for such committees as may be deemed expedient to facilitate the work of the board, the members of which committees shall be appointed by the chairman. A vote of a majority of the entire membership of the board shall be necessary to exercise any of the administrative powers, or perform any of the administrative duties vested in, or required to be performed by, the board. A majority of the board shall constitute a quorum, and a majority of those present at any meeting of the board may determine and advise as to questions of policy in the administration of any of the departments of the state government created by this act, submitted to the board by any member thereof. The board shall meet at the call of the governor. [L. '21, p. 15, § 14.]

§ 10773. Administrative Board—Powers and Duties.

The administrative board shall have the power, and it shall be its duty:

(1) To, from time to time, systematize and unify the administrative duties of the departments of the state government created by this act, and make such necessary assignments of duties to the departments as it may deem advisable to correlate and co-ordinate the work of the departments;

(2) To, from time to time, classify all subordinate officers, and employees of the state offices, departments, and institutions in accordance with the system of classification prepared by the director of efficiency;

(3) To, from time to time, determine the salaries and compensations to be paid such subordinate officers and employees in accordance with the classification and the scale of salaries and compensations adopted by the board;

(4) To fix the amount of the bond to be given by each appointive state officer and each employee of the state in all cases where the same is not fixed by law;

(5) To require the giving of an additional bond, or a bond in a greater amount than that provided by law, in all cases where in its judgment the statutory bond is not sufficient in amount to cover the liability of the officer or employee;

(6) To, by resolution, exempt subordinate employees from giving bond when in its judgment the powers and duties of such employees are such as not to require the giving of a bond to protect the state;

(7) To, in case of an emergency requiring expenditures in excess of the amount appropriated by the legislature for any institution of the state, state officer, or department of the state government, and upon the written request of the governing authorities of the institution, the state officer, or the head of the department, setting forth the emergency and needs of the institution, office, or department, and in case the board by a majority vote of all its members determine that the public interest requires it, issue a permit in writing, signed by the chairman and attested by the secretary of the board, authorizing such institution, officer, or department to incur such liabilities as the circumstances may require, to an amount stated in the permit, and directing that certified copies of the request and permit, and a detailed statement of the liabilities incurred be filed in the office of the secretary of state and transmitted to the legislature at its next ensuing session, together with a request for an appropriation to cover the liabilities incurred. Such permit and full compliance with its provisions shall relieve the person incurring any such liability from personal liability therefor. [L. '21, p. 15, § 15.]

§ 10774. Official Bonds.

Every appointive state officer and every employee of the state shall, before entering upon the discharge of the duties of his office or employment, give a surety bond, payable to the state, in such sum as is provided by law or in such sum as shall be deemed necessary by the administrative board created by this act, conditioned upon the faithful performance of the duties of the office or employment, and upon accounting for all property of the state that shall come into his possession by virtue of his office or employment, which bond shall be approved as to form by the attorney general and as to sufficiency by the administrative board, and shall be filed in the office of the secretary of state. [L. '21, p. 17, § 16.]

§ 10775. Term of Office.

Each office created by this act is hereby declared established as of the first day of April, 1921, and each officer whose office is created by this act shall, if sooner appointed, hold office beginning on the first day of April, 1921. [L. '21, p. 17, § 17.]

§ 10776. Departmental Directors—Salaries—Governor to Fix.

The directors of the departments of the state government created by this act shall respectively exercise such powers and perform such executive and administrative duties as are provided by this act, and re-

ceive such annual salaries payable in equal monthly installments, as the governor shall fix, not to exceed the sums provided by this act: Provided, that should the governor appoint any elective state officer as the director of any department created by this act, such elective officer shall receive as compensation for the extra duties imposed by this act only such sum as the governor shall fix, not to exceed the difference between the maximum salary provided by this act and the salary provided by law for such elective officer. Each officer whose office is created by this act shall, before entering upon the duties of his office, take and subscribe the oath of office prescribed by law for elective state officers, and file the same in the office of the secretary of state. [L. '21, p. 17, § 18.]

§ 10777. Departmental Rules and Regulations.

The director of each department created by this act shall have the power to prescribe rules and regulations, not inconsistent with law, for the government of his department, the conduct of its subordinate officers and employees, and the disposition and performance of its business, and the custody, use and preservation of the records, papers, books, documents, and property pertaining thereto. [L. '21, p. 18, § 19.]

§ 10778. Departmental Offices—Branches.

Each department created by this act shall maintain its principal office at the state capital in rooms provided by the department of business control. The director of each department may, with the approval of the governor, establish and maintain branch offices at other places than the state capital for the conduct of one or more of the functions of his department. [L. '21, p. 18, § 20.]

§ 10779. Department of Public Works—Divisions—Salary of Director.

The department of public works shall be organized into and consist of three divisions, to be known respectively, as, (1) the division of transportation, (2) the division of public utilities, and (3) the division of highways. The director of public works, shall have charge and general supervision of the department of public works, shall receive a salary of not to exceed six thousand dollars per annum, shall appoint a traffic and rate expert for the department, and shall have power to appoint and employ such clerical and other assistants as may be necessary for the general administration of the department. [L. '21, p. 18, § 21.]

§ 10780. Supervisor of Transportation.

The director of public works shall appoint and deputize an assistant director, to be known as the supervisor of transportation, who shall have charge and supervision of the division of transportation, and, with the approval of the director, shall have power to appoint and employ such inspectors, engineers, experts, and clerical and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 19, § 22.]

§ 10781. Supervisor of Public Utilities.

The director of public works shall appoint and deputize an assistant director, to be known as the supervisor of public utilities, who shall have

charge and supervision of the division of public utilities, and, with the approval of the director, shall have power to appoint and employ such inspectors, engineers, experts, and clerical and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 19, § 23.]

§ 10782. Supervisor of Highways.

The director of public works shall appoint and deputize an assistant director, to be known as the supervisor of highways, who shall have charge of the division of highways, and, with the approval of the director, shall have power to appoint and deputize a chief clerk of the division, and appoint and employ such inspectors, engineers, and clerical and other assistants as may be necessary to carry on the work of the division. No person shall be eligible for appointment as supervisor of highways, or to hold such office, unless he is an experienced constructing highway engineer. [L. '21, p. 19, § 24.]

§ 10783. Division of Transportation—Powers and Duties.

The director of public works shall have the power, and it shall be his duty, through and by means of the division of transportation:

(1) To exercise all the powers and perform all the duties relating to common carriers of freight or passengers, and the transportation of property or persons, now vested in, and required to be performed by, the public service commission. [L. '21, p. 19, § 25.]

§ 10784. Division of Public Utilities—Powers and Duties.

The director of public works shall have the power, and it shall be his duty, through and by means of the division of public utilities:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the public service commission, except the powers and duties relating to common carriers of freight and passengers and the transportation of property and persons, those relating to the inspection, grading, and certification of grain, hay, peas, grain and hay products, rice, beans, and other similar articles, nitrates and other fertilizers and sulphur and other chemicals, those relating to the inspection of tracks, bridges, structures, machinery, equipment, and apparatus of railroad, street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities with respect to the safety of employees, those relating to the administration and enforcement of laws providing for the protection of employees of railroads, street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities, and those relating to the enforcement, amendment, alteration, change, and making additions to rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof;

(2) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 20, § 26.]

§ 10785. Joint Hearings.

The director of public works, the supervisor of transportation, and the supervisor of public utilities shall have the power, and it shall be

their duty, to jointly hear and decide, by a majority vote, all matters, arising either in the division of transportation or the division of public utilities, which the director of public works, or the supervisor of transportation or the supervisor of public utilities, respectively, shall deem to be of sufficient importance to require their joint action, and to hear and decide, by a majority vote, any matter concerning which any person affected by the decision of either the director of public works, or the supervisor of transportation or the supervisor of public utilities shall by request in writing, ask for a joint decision: Provided, however, that nothing herein contained shall be construed as depriving any person feeling himself aggrieved by any decision of either the director of public works, the supervisor of transportation, the supervisor of public utilities, or by any joint decision, of the right of appeal therefrom to a court of competent jurisdiction in the manner provided by law. [L. '21, p. 20, § 27.]

§ 10786. Division of Highways—Powers and Duties.

The director of public works shall have the power, and it shall be his duty, through and by means of the division of highways:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state highway commission;

(2) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 21, § 28.]

§ 10787. Department of Business Control—Divisions.

The department of business control shall be organized into, and consist of, five divisions, to be known respectively as, (1) the division of administration, (2) the division of purchasing, (3) the division of farm management, (4) the division of industrial management, (5) the division of public buildings and grounds. The director of business control shall have charge and general supervision of the department, and shall receive a salary of not to exceed six thousand dollars per annum. [L. '21, p. 21, § 29.]

§ 10788. Chief Assistant.

The director of business control shall have the power to appoint and depute a chief assistant director, and to appoint and employ such clerical assistants as may be necessary for the general administration of the department. The chief assistant director shall assist in the general supervision and administration of the department. [L. '21, p. 22, § 30.]

§ 10789. Supervisor of Purchasing.

The director of business control shall have power to appoint and depute an assistant director, to be known as the supervisor of purchasing, who shall be, ex officio, chief clerk and disbursing officer of the department, have charge and supervision of the division of purchasing, and have power, with the approval of the director, to appoint and employ such auditors, accountants, clerks, and other assistants as may be necessary to carry on the work of the division. No person shall be eligible for appointment as supervisor of purchasing, or to hold that office, unless

he is a citizen of this state and has had practical experience in commercial pursuits and accounting. [L. '21, p. 22, § 31.]

§ 10790. Dietician.

The director of business control shall have the power to select a member of the faculty of the University of Washington, or the State College of Washington, skilled in scientific food analysis and dietetics, to be known as the state dietician, who shall make and furnish to the department food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The state dietitian shall receive his actual and necessary traveling expenses while engaged in the performance of his duties. [L. '21, p. 22, § 32.]

§ 10791. Supervisor of Farm Management.

The director of business control shall have power to appoint and deputize an assistant director, to be known as the supervisor of farm management, who shall have charge and supervision of the division of farm management, and have power, with the approval of the director, to appoint and employ such experts, surveyors, foremen, workmen, clerks, and other assistants as may be necessary to carry on the work of the division. No person shall be eligible for appointment as supervisor of farm management, or to hold such office, unless he is a citizen of this state and has had practical experience in farming operations. [L. '21, p. 22, § 33.]

§ 10792. Supervisor of Industrial Management.

The director of business control shall have the power to appoint and deputize an assistant director, to be known as the supervisor of industrial management, who shall have charge and supervision of the division of industrial management, and shall have power, with the approval of the director, to appoint and employ such foremen, mechanics, workmen, clerks, and other assistants as may be necessary to carry on the work of the division. No person shall be eligible for appointment as supervisor of industrial management, or to hold that office, unless he is a citizen of this state and has had practical experience in the management of industrial or manufacturing plants. [L. '21, p. 23, § 34.]

§ 10793. Supervisor of Buildings and Grounds.

The director of business control shall have power to appoint and deputize an assistant director, to be known as the supervisor of buildings and grounds, who shall have charge and supervision of the division of buildings and grounds, and shall have power, with the approval of the director, to appoint and employ such engineers, architects, draftsmen, gardeners, watchmen, janitors, mechanics, workmen, clerks, and other assistants as may be necessary to carry on the work of the division. No person shall be eligible for appointment as supervisor of buildings and grounds, or to hold that office, unless he is a citizen of this state and

has had practical experience in structural engineering, architecture, or building construction. [L. '21, p. 23, § 35.]

§ 10794. Business Control Director—Powers and Duties.

The director of business control shall have the power, and it shall be his duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state board of control, except (a) the supervision of the custodial care and treatment of the inmates of the state custodial school and the state hospitals for the insane, (b) the paroling of prisoners from the state penitentiary, and (c) the supervision of the education given at the state training school, the state school for girls, the state school for the deaf, and the state school for the blind;

(2) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the board of managers of the Washington state reformatory, excepting the paroling of prisoners from that institution;

(3) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the board of directors of the women's industrial home and clinic, except the parole and discharge of inmates of that institution;

(4) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the superintendent of capitol buildings and grounds;

(5) To classify the work of the department and to assign it to proper divisions;

(6) To comply with all requirements of the director of health in relation to health and sanitation at the institutions under the control of the department of business control;

(7) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 24, § 36.]

§ 10795. Supervisor of Purchasing—Powers and Duties—Payment for Supplies.

The director of the department of business control shall have the power, and it shall be his duty, through and by means of the division of purchasing, to purchase all supplies for the support and maintenance of the state institutions under the control of the department, and to purchase, in the manner provided by law for the purchase of supplies needed for the support and maintenance of the institutions under the control of the department, all the supplies needed for the support, maintenance, and use of the state's educational institutions, the offices of the elective state officers, the supreme court, the administrative and other departments of the state government, and the offices of all appointive officers of the state; and it shall be the duty of the governing authorities of the state's educational institutions, the elective state officers, the supreme court, the administrative and other departments of the state government, and of all appointive officers of the state, to cause to be prepared estimates of the supplies required for the proper conduct and maintenance of their

respective institutions, offices, and departments, covering periods to be fixed by the director of business control, and to forward the same to the director in accordance with his directions, and no such authorities, officers, or departments, or any officer or employee thereof, shall have the authority to purchase any article for the use of said institutions, offices, or departments except in case of extreme and immediate necessity, and it shall be the duty of all persons making such emergency purchases to immediately report the same, with the reasons therefor, to the supervisor of purchasing. Purchases made for the state's educational institutions, the offices of the elective state officers, the supreme court, the administrative and other departments of the state government, and the offices of all appointive officers of the state, shall be paid for out of the moneys appropriated for supplies, material, and service of the respective institutions, offices, and departments. [L. '21, p. 25, § 37.]

§ 10796. Storage of Supplies.

The director of business control shall have the power to establish and maintain at the state capital a warehouse or storeroom for the storage and distribution of supplies purchased for the elective state officers, the supreme court, and the administrative and other departments of the state government located at the state capital. [L. '21, p. 26, § 38.]

§ 10797. Division of Farm Management—Powers.

The director of business control shall have the power, through and by means of the division of farm management:

(1) To make a survey, investigation, and classification of the lands connected with the state institutions under the control of the department, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock-raising purposes, taking into consideration the cost of making them ready for cultivation, the character of the soil, its depth and fertility, the number and kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the drainage, natural or artificially available, the needs of all the state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions:

(2) To establish and carry on suitable farming operations at the several institutions under the control of the department;

(3) To supply the several institutions with the necessary food products produced thereat;

(4) To exchange with, or furnish to, other state institutions, food products at the cost of production;

(5) To sell and dispose of surplus food products produced. [L. '21, p. 26, § 39.]

§ 10798. Division of Industrial Management—Powers.

The director of business control shall have the power, through and by means of the division of industrial management:

(1) To establish, install, and operate, at the several state institutions under the control of the department, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;

(2) To supply the several institutions with the necessary industrial products produced thereat;

(3) To exchange with, or furnish to, other state institutions industrial products at the cost of production;

(4) To sell and dispose of surplus industrial products produced. [L. '21, p. 27, § 40.]

§ 10799. State Institutional Revolving Fund.

The director of business control shall have the power, and it shall be his duty, to cause all moneys or credits received from the sale or exchange of farm or industrial products produced or manufactured at the several institutions under the control of the department to be paid into the state treasury to the credit of a revolving fund, to be known as the state institutional revolving fund, which fund is hereby created and established in the state treasury, and from which fund there shall be biennially appropriated for the benefit of the several institutions under the control of the department sufficient moneys to cover the estimated biennial contribution to such fund of each of the said institutions. [L. '21, p. 27, § 41.]

§ 10800. Disposal of Useless Personalty.

The director of business control shall have the power, and it shall be his duty, when authorized in writing so to do by the department of efficiency, to sell or exchange any personal property belonging to the state for which the office, department, or institutions having custody thereof has no further use, at public or private sale and with or without notice, in the discretion of the director of business control, and to immediately report such sale or exchange to the department of efficiency, on forms to be furnished for that purpose, and to cause the moneys realized from the sale of any such personal property to be paid into the state treasury, accompanied by a statement showing the respective fund from which the property sold was purchased, to which fund the state treasurer shall credit such moneys: Provided, if such fund be not in existence at the time of the sale, the moneys shall be credited to the general fund. [L. '21, p. 27, § 42.]

§ 10801. Accounting Systems.

The director of business control shall have the power, and it shall be his duty, to install and maintain in the department a proper cost accounting system of accounts for each of the institutions under the control of the department, for the purpose of detecting and avoiding unprofitable expenditures and operations. [L. '21, p. 28, § 43.]

§ 10802. Division of Public Buildings and Grounds—Powers and Duties.

The director of business control shall have the power, and it shall be his duty, through and by means of the division of public buildings and grounds:

(1) To prepare topographical and architectural plans for the state institutions under the control of the department, and for the state capitol buildings, where not already prepared;

(2) To establish a systematic building program providing for the grouping of buildings at the institutions under the control of the department, and the state capital;

(3) To prepare plans, specifications and estimates of cost for all necessary repairs or betterments of buildings owned by the state, except those of the state's educational institutions, to accompany the estimates for the biennial budget;

(4) To supervise the erection, repair, and betterment of all such state buildings. [L. '21, p. 28, § 44.]

§ 10803. Parole Boards—Powers and Duties.

The governor shall, from time to time, appoint parole boards, of three members, who shall, respectively, exercise all the powers and perform all the duties relating to the parole of prisoners from the state penitentiary and the Washington state reformatory, now vested in, and required to be performed by, the state board of control and the board of managers of the reformatory, respectively, and shall, from time to time, appoint a parole board, of three women, who shall exercise all the powers and perform all the duties relating to the parole and discharge of inmates from the women's industrial home and clinic, now vested in and required to be performed by, the board of directors of that institution. The members of all such parole boards shall hold office at the pleasure of the governor and shall each receive ten dollars per diem for time actually and necessarily spent in the discharge of their duties, and their actual and necessary traveling expenses, to be paid out of the moneys appropriated for supplies, material, and service, for the several institutions. [L. '21, p. 29, § 45.]

§ 10804. Director of Efficiency.

The director of efficiency shall have charge and general supervision of the department of efficiency, and shall have power to appoint and deputize a chief examiner and such other examiners as may be necessary, and to appoint a budget clerk and such other clerical assistants as may be necessary to carry on the work of the department, and shall receive a salary of not to exceed six thousand dollars per annum. [L. '21, p. 29, § 46.]

§ 10805. Powers and Duties of Director of Efficiency.

The director of efficiency shall have the power, and it shall be his duty:

(1) To exercise all the powers and perform all the duties relating to the inspection, examination, and supervision of all public offices of the

state, and all state, educational, penal, benevolent, and reformatory institutions, and all offices, departments, and agencies of the state government, now vested in, and required to be performed by, the state auditor, the bureau of inspection and supervision of public offices, and the inspector, deputy inspectors, and the examiners thereof;

(2) To make efficiency surveys of all state departments and institutions, and the administrative and business methods pursued therein, examine into the physical needs and industrial activities thereof, and to make confidential reports to the governor, recommending necessary betterments, repairs, and the installation of improved and more economical administrative methods, and advising such action as will result in a greater measure of self-support and remedies for inefficient functioning;

(3) To compute cost findings of the several farming and industrial operations at the state institutions, and make confidential reports to the governor of profit and loss;

(4) To make property surveys in all state offices and departments and at all state institutions, install and require the maintenance of systems of property accounting, and make confidential reports to the governor;

(5) To, upon the request of the officer or department, or the governing authorities of any state institution, having the custody of any personal property belonging to the state, authorize the sale or exchange of the same, when it shall appear that the office, department, or institution has no further use for such property;

(6) To compile the daily expenditures of the several offices, departments, and institutions of the state, and from such compilation and the estimates for the biennial appropriation furnished by the several offices, institutions, and departments prepare the biennial statement provided by law as the basis for the state budget;

(7) To prepare and recommend to the administrative board a system of classification, salaries, and compensations for all subordinate officers and employees of the state offices, departments, and institutions other than educational institutions, including, (a) a basic rate of fixed work value, (b) titles of recognized work requirements by sub-classes and grades of employment, (c) standards of educational or experience qualifications for each class or sub-grade of employment, (d) classified minimum requirements to be met by persons before being eligible for appointment or employment, (e) classified standards to govern promotions and transfers, (f) classified standards of service provisions requiring efficiency of service, (g) classified standards of increasing compensations based on length and quality of service, (h) regular scale of salaries and compensations, and (i) progressive scales of salaries and compensations for efficiency of service, and a tentative schedule for all existing subordinate officers and employees based upon such system, and to, from time to time, recommend such changes in the system of classification and the schedule adopted by the board as he shall deem for the best interest of the state;

(8) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 30, § 47.]

§ 10806. Expenses of Inspection and Examination.

The expense of inspecting and examining public offices of the state, state institutions, and departments of the state government, making efficiency surveys of state departments and institutions, and making property surveys in state offices and departments and at state institutions, including the salaries and traveling expenses of examiners, shall be paid out of the moneys appropriated for service for the several offices, institutions, and departments. [L. '21, p. 31, § 48.]

§ 10807. Department of Taxation and Examination—Divisions.

The department of taxation and examination shall be organized into, and consist of, three divisions, to be known respectively as, (1) the division of taxation, (2) the division of banking, and (3) the division of municipal corporations. The director of taxation and examination shall have charge and general supervision of the department, receive a salary of not to exceed six thousand dollars per annum, and have power to appoint and employ such clerical assistants as may be necessary for the general administration of the department. [L. '21, p. 32, § 49.]

§ 10808. Supervisor of Taxation.

The director of taxation and examination shall appoint and deputize an assistant director, to be known as the supervisor of taxation, who shall have charge and supervision of the division of taxation, and shall have power, with the approval of the director, to appoint and employ such clerical and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 32, § 50.]

§ 10809. Supervisor of Banking.

The director of taxation and examination shall appoint and deputize an assistant director, to be known as the supervisor of banking, who shall have charge and supervision of the division of banking, and shall have power, with the approval of the director, to appoint and employ such deputies, examiners, inspectors, and clerical and other assistants as may be necessary to carry on the work of the division. No person shall be eligible to appointment, as, or hold the office of, supervisor of banking, unless he is, and for at least two years prior to his appointment has been, a citizen of this state, and has had practical experience in banking, trust company, or building and loan company business, nor if he is interested in any bank, trust company, or building and loan association, as a director, officer, or stockholder. [L. '21, p. 32, § 51.]

§ 10810. Supervisor of Municipal Corporations.

The director of taxation and examination shall have the power to appoint and deputize an assistant director, to be known as the supervisor of municipal corporations, who shall have charge and supervision of the division of municipal corporations, and shall have power, with the approval of the director, to appoint and employ such inspectors, examiners, and clerical and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 33, § 52.]

§ 10811. Powers and Duties of Division of Taxation.

The director of taxation and examination shall have the power, and it shall be his duty, through and by means of the division of taxation:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state tax commissioner, except the powers and duties relating to inheritance taxes and escheats;

(2) To secure, tabulate, and keep a record of valuations of all classes of property, real, personal, and mixed, tangible and intangible, throughout the state, and for that purpose to require of all officers, examiners, inspectors, assistants, and employees of the department of taxation and examination, and of all officers and employees of other departments of the state government whose work makes it possible to ascertain valuations, the filing of reports with the department of taxation and examination, giving information as to such valuations, and the source thereof, to the end that there shall be on file, for the use of the state equalization committee created by this act, information as to property valuations in every section of the state;

(3) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 33, § 53.]

§ 10812. Director of Taxation and Examination—Powers and Duties.

The director of taxation and examination shall have the power, and it shall be his duty, through and by means of the division of banking:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the bank commissioner;

(2) To exercise all the powers and perform all the duties in relation to the organization, inspection, supervision, and dissolution of building and loan associations, now vested in, and required to be performed by, the state auditor;

(3) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 34, § 54.]

§ 10813. Division of Municipal Corporations—Powers and Duties.

The director of taxation and examination shall have the power, and it shall be his duty, through and by means of the division of municipal corporations:

(1) To exercise all the powers and perform all the duties relating to the inspection and supervision of public offices of counties, cities, towns, townships, taxing districts, assessing districts, and other municipal corporations, now vested in, and required to be performed by, the state auditor, the bureau of inspection and supervision of public offices, and the inspector, deputy inspectors and examiners thereof;

(2) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 34, § 55.]

§ 10814. Board of Health.

The director of health, who shall be an experienced physician, and four other persons experienced in matters of health and sanitation, to be

appointed by the governor, shall constitute the state board of health. The director shall be chairman and executive officer of the board and, with the advice and assistance of the board, shall have charge and supervision of the department of health, and shall receive a salary of not to exceed five thousand dollars per annum. [L. '21, p. 34, § 56.]

§ 10815. Registrar of Vital Statistics.

The director of health shall appoint the state registrar of vital statistics, who shall be the secretary of the state board of health. The director shall have power to appoint and employ such deputies, scientific experts, sanitary engineers, quarantine officers, local registrars, and such clerical and other assistants as may be necessary to carry on the work of the department. [L. '21, p. 35, § 57.]

§ 10816. Board of Health—Powers and Duties.

The state board of health, created by this act, shall have the power, and it shall be its duty:

- (1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state board of health;
- (2) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 35, § 58.]

§ 10817. Director of Health—Powers and Duties.

The director of health shall have the power, and it shall be his duty:

- (1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state commissioner of health;
- (2) To, with the assistance of the state registrar of vital statistics, exercise all the powers and perform all the duties, in relation to the registration of vital and mortuary statistics, now vested in, and required to be performed by, the state commissioner of health, the superintendent of registration, and the state registrar;
- (3) To, not less often than once each six months, visit and inspect each of the state institutions, ascertain the sanitary and health conditions existing at each of said institutions, require the respective governing authorities thereof to take such action as will conserve the health of all persons connected therewith, and report his findings to the governor. [L. '21, p. 35, § 59.]

§ 10818. Institutional Board of Health.

The director of health and the head physicians of the women's industrial home and clinic, the state custodial school and each of the state hospitals for the insane, and one woman physician to be appointed by the governor to hold office during his pleasure, shall constitute a board, to be known as the institutional board of health, which shall have power, and it shall be its duty, to visit each such institution and advise the superintendent regarding general policy of custodial care and treatment of the inmates thereof, to, from time to time, advise general rules and regulations for carrying out such policy, and to, with the advice and assistance of the state dietitian, adopt and prescribe general rules and

regulations to provide a healthful and proper diet for the various classes of inmates of such state institutions, having regard to their age, physical and mental condition, and their ability to perform labor. The director of health shall be the chairman of the institutional board of health which shall meet at the state capital on the last Monday in June of each year and at such other times and places, at the call of the chairman, as the board may fix by rules and regulations. The board may, from time to time, cause to be printed a report showing the general policy of, and the rules and regulations relating to, custodial care and treatment, and the rules and regulations relating to diet, as recommended by the board, and furnish a sufficient number of copies to each such state institution for its use. The superintendent of each of such institutions shall, however, have exclusive care and charge of the custodial treatment of the inmates of the institution under his care, and may or may not adopt the suggestions of the institutional board of health relating to custodial treatment. The board may also, upon request, furnish copies of the dietetic rules and regulations to other institutions. [L. '21, p. 35, § 60.]

§ 10819. Department of Conservation and Development—Divisions.

The department of conservation and development shall be organized into, and consist of, five divisions, to be known respectively as, (1) the division of forestry, (2) the division of geology, (3) the division of reclamation, (4) the division of the Columbia basin survey, and (5) the division of hydraulics. The director of conservation and development shall receive a salary of not to exceed seventy-five hundred dollars per annum, and shall have the power to appoint such clerical assistants as may be necessary for the general administration of the department. [L. '21, p. 36, § 61.]

§ 10820. Supervisor of Forestry.

The director of conservation and development shall have power to appoint and deputize a competent assistant director, to be known as the supervisor of forestry, who shall have charge and supervision of the division of forestry and, with the approval of the director, shall have power to appoint and employ such forest rangers, fire wardens, clerks, and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 37, § 62.]

§ 10821. Supervisor of Geology.

The director of conservation and development shall have power to appoint and deputize a competent assistant director, to be known as the supervisor of geology, who shall have charge and supervision of the division of geology, receive ten dollars per diem for each day employed in the performance of his duty and his actual and necessary traveling expenses, and, with the approval of the director, shall have power to appoint and employ such field experts, surveyors, clerks, and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 37, § 63.]

§ 10822. Supervisor of Reclamation.

The director of conservation and development shall have power to appoint and deputize a competent assistant director, to be known as the supervisor of reclamation, who shall have charge and supervision of the division of reclamation, and, with the approval of the director, shall have power to appoint and employ such engineers, experts, accountants, clerks, and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 37, § 64.]

§ 10823. Supervisor of the Columbia Basin Survey.

The director of conservation and development shall have power to appoint and deputize a competent assistant director, to be known as the supervisor of the Columbia basin survey, who shall have charge and supervision of the Columbia basin survey, and, with the approval of the director, shall have power to appoint and employ such engineers, experts, and clerical and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 38, § 65.]

§ 10824. Supervisor of Hydraulics.

The director of conservation and development shall have power to appoint and deputize a competent assistant director, to be known as the supervisor of hydraulics, who shall have charge and supervision of the division of hydraulics, and, with the approval of the director, shall have power to appoint and employ such engineers and clerical and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 38, § 66.]

§ 10825. Division of Forestry—Powers and Duties.

The director of conservation and development shall have the power, and it shall be his duty, through and by means of the division of forestry:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state board of forest commissioners;

(2) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state forester;

(3) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 38, § 67.]

§ 10826. Director of Conservation and Development—Powers as to Forests, Fires and Game.

The director of conservation and development shall have power to exercise all the powers relating to the suspension of permits for privileges to burn forest material during the closed season, and relating to the suspension of the open season for shooting game, now vested in the governor. [L. '21, p. 38, § 68.]

§ 10827. Division of Geology—Powers and Duties.

The director of conservation and development shall have the power, and it shall be his duty, through and by means of the division of geology:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the board of geological survey;

(2) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state geologist;

(3) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 39, § 69.]

§ 10828. Division of Reclamation—Powers and Duties.

The director of conservation and development shall have the power, and it shall be his duty, through and by means of the division of reclamation:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state reclamation board;

(2) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 39, § 70.]

§ 10829. Division of the Columbia Basin Survey—Powers and Duties.

The director of conservation and development shall have the power, and it shall be his duty, through and by means of the division of the Columbia basin survey:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the Columbia basin survey commission;

(2) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 39, § 71.]

§ 10830. Division of Hydraulics—Powers and Duties.

The director of conservation and development shall have the power, and it shall be his duty, through and by means of the division of hydraulics:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state hydraulic engineer;

(2) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 39, § 72.]

§ 10831. Joint Hearings—Appeals.

The director of conservation and development, the supervisor of hydraulics, and the supervisor of reclamation, or the supervisor of the Columbia basin survey, as the case may be, shall have the power, and it shall be their duty, to jointly hear and decide, by a majority vote, all matters, arising either in the division of reclamation or the division of the Columbia basin survey, which the director of conservation and development, or the supervisor of reclamation or the supervisor of the Columbia basin survey, respectively, shall deem to be of sufficient importance to require their joint action; and to hear and decide, by a majority vote, any matter concerning which any person affected by the decision of either the supervisor of reclamation or the supervisor of the Columbia basin survey shall, by request in writing, ask for a joint decision: Provided,

however, that nothing herein contained shall be construed as depriving any person feeling himself aggrieved by any decision of either the director of conservation and development, the supervisor of reclamation, the supervisor of the Columbia basin survey, or by any joint decision, of the right of appeal therefrom to a court of competent jurisdiction in the manner provided by law. [L. '21, p. 40, § 73.]

§ 10832. Department of Labor and Industries—Divisions.

The department of labor and industries shall be organized into, and consist of, three divisions, to be known respectively as, (1) the division of industrial insurance, (2) the division of safety, (3) the division of industrial relations. The director of labor and industries shall receive a salary of not to exceed seventy-five hundred dollars per annum, and have power to appoint such clerical assistants as may be necessary for the general administration of the department. [L. '21, p. 40, § 74.]

§ 10833. Supervisor of Industrial Insurance.

The director of labor and industries shall have the power to appoint and deputize an assistant director, to be known as the supervisor of industrial insurance, who shall have charge and supervision of the division of industrial insurance, and, with the approval of the director, appoint and employ such adjusters, medical and other examiners, auditors, inspectors, clerks, and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 41, § 75.]

§ 10834. Supervisor of Safety.

The director of labor and industries shall have power, (1) to appoint and deputize an assistant director, to be known as the supervisor of safety, who shall have charge and supervision of the division of safety, (2) to appoint the state mining board, the members of which shall have the qualifications provided by law, and (3) to appoint and deputize a chief inspector of mines, who shall have the qualifications provided by law for the office of the state mine inspector. The supervisor of safety, with the approval of the director, shall have power to appoint and employ such inspectors, clerks, and other assistants as may be necessary to carry on the work of the division. The chief mine inspector, with the approval of the director, shall appoint such qualified deputies as are provided by law. [L. '21, p. 41, § 76.]

§ 10835. Supervisor of Industrial Relations.

The director of labor and industries shall have power to appoint and deputize an assistant director, to be known as the supervisor of industrial relations, who shall be the state mediator, have charge and supervision of the division of industrial relations, and, with the approval of the director, shall appoint an assistant to be known as the industrial statistician, and a female assistant to be known as the supervisor of women in industry, and have power to appoint and employ such assistant mediators, experts, clerks, and other assistants as may be necessary to carry on the work of the division. [L. '21, p. 41, § 77.]

§ 10836. Division of Industrial Insurance—Powers and Duties.

The director of labor and industries shall have the power, and it shall be his duty, through and by means of the division of industrial insurance:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the industrial insurance department and the commissioners thereof;

(2) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state medical aid board;

(3) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the local aid boards;

(4) To have the custody of all property acquired by the state at execution sale upon judgments obtained for delinquent industrial insurance premiums or medical aid contributions, and penalties and costs, to sell and dispose of the same at private sales for the sale purchase price, and to pay the proceeds into the state treasury to the credit of the industrial insurance fund, or medical aid fund, as the case may be. In case of the sale of real estate the director shall execute the deed in the name of the state;

(5) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 42, § 78.]

§ 10837. Joint Hearings—Appeals.

The director of labor and industries, the supervisor of industrial insurance, and the supervisor of safety shall have the power, and it shall be their duty, to jointly hear and decide, by a majority vote, all matters arising in either the division of industrial insurance or the division of safety, which the director of labor and industries, or the supervisor of industrial insurance or the supervisor of safety, respectively, shall deem to be of sufficient importance to require their joint action, and to hear and decide, by a majority vote, any matter concerning which any person affected by the decision of either the supervisor of industrial insurance or the supervisor of safety shall, by request in writing, ask for a joint decision: Provided, however, that nothing herein contained shall be construed as depriving any person feeling himself aggrieved by any decision of either the director of labor and industries, the supervisor of industrial insurance, the supervisor of safety, or by any joint decision, of the right of appeal therefrom to a court of competent jurisdiction in the manner provided by law. [L. '21, p. 42, § 79.]

§ 10838. Division of Safety—Powers and Duties.

The director of labor and industries shall have the power, and it shall be his duty, through and by means of the division of safety:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state safety board, except the appointment of the state mining board;

(2) To exercise all the powers and perform all the duties in relation to the inspection of factories, mills, work-shops, storehouses, warerooms, stores and buildings, and the machinery and apparatus therein contained, and

steam vessels, and other vessels operated by machinery, and in relation to the administration and enforcement of all laws providing for the protection of employees in mills, factories, work-shops, and other places where machinery is used, and in relation to the enforcement, inspection, and certification of safe places and safety device standards in all industries, now vested in, and required to be performed by, the commissioner of labor;

(3) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the state mine inspector and deputy mine inspectors;

(4) To exercise all the powers and perform all the duties in relation to the inspection of tracks, bridges, structures, machinery, equipment, and apparatus of railroads, street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities, with respect to the safety of employees, and the administration and enforcement of all laws providing for the protection of employees of railroads, street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities, now vested in, and required to be performed by, the public service commission;

(5) To exercise all the powers and perform all the duties in relation to the enforcement, amendment, alteration, change, and making additions to, rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof, now vested in, and required to be performed by, the public service commission;

(6) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the inspector of hotels;

(7) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the bureau of labor;

(8) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 43, § 80.]

§ 10839. Division of Industrial Relations—Powers and Duties.

The director of labor and industries shall have the power, and it shall be his duty, through and by means of the division of industrial relations:

(1) To promote mediation in, conciliation concerning, and the adjustment of, industrial disputes, in such manner and by such means as may be provided by law;

(2) To study and keep in touch with problems of industrial relations and, from time to time, make public reports and recommendations to the legislature;

(3) To, with the assistance of the industrial statistician, exercise all the powers and perform all the duties in relation to collecting, assorting, and systematizing statistical details relating to labor within the state, now vested in, and required to be performed by, the secretary of state, and to report to, and file with, the secretary of state duly certified copies of the statistical information collected, assorted, systematized, and compiled, and in collecting, assorting, and systematizing such statistical information to, as far as possible, conform to the plans and reports of the United States department of labor;

(4) To, with the assistance of the industrial statistician, make such special investigations and collect such special statistical information as may be needed for use by the department or division of the state government having need of industrial statistics;

(5) To, with the assistance of the supervisor of women in industry, supervise the administration and enforcement of all laws respecting the employment and relating to the health, sanitary conditions, surroundings, hours of labor, and wages of women and minors;

(6) To exercise all the powers and perform all the duties, not specifically assigned to any other division of the department of labor and industries, now vested in, and required to be performed by, the commissioner of labor;

(7) To exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 44, § 81.]

§ 10840. Industrial Welfare Committee—Powers and Duties.

The director of labor and industries, the supervisor of industrial insurance, the supervisor of industrial relations, the industrial statistician, and the supervisor of women in industry shall constitute a committee, of which the director shall be chairman, and the supervisor of women in industry shall be executive secretary, which shall have the power, and it shall be its duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the industrial welfare commission. [L. '21, p. 46, § 82.]

§ 10841. Department of Agriculture—Divisions.

The department of agriculture shall be organized into, and consist of, five divisions, to be known respectively as, (1) the division of agriculture, (2) the division of horticulture, (3) the division of dairy and livestock, (4) the division of foods, feeds, drugs, and oils, and (5) the division of weights and measures. The director of agriculture shall have charge and general supervision of the department and shall receive a salary of not to exceed seventy-five hundred dollars per annum. [L. '21, p. 46, § 83.]

§ 10842. Supervisor of Agriculture.

The director of agriculture shall have the power to appoint and deputize an assistant director to be known as the supervisor of agriculture, who shall have charge and supervision of the division of agriculture, and, with the approval of the director, shall have power to appoint and employ such inspectors and clerical and other assistants, as may be necessary to carry on the work of the division. [L. '21, p. 46, § 84.]

§ 10843. Supervisor of Horticulture.

The director of agriculture shall have the power to appoint and deputize an assistant director, to be known as the supervisor of horticulture, who shall have charge and supervision of the division of horticulture, and, with the approval of the director, shall have power to appoint and deputize such inspectors, and to appoint and employ such clerical and

other assistants, as may be necessary to carry on the work of the division. [L. '21, p. 46, § 85.]

§ 10844. Supervisor of Dairy and Livestock.

The director of agriculture shall have the power to appoint and deputize an assistant director, to be known as the supervisor of dairy and livestock, who shall have charge and supervision of the division of dairy and livestock, and, with the approval of the director, shall have power to appoint and deputize such veterinarians, testers, and inspectors, and to appoint and employ such clerical and other assistants, as may be necessary to carry on the work of the division. [L. '21, p. 47, § 86.]

§ 10845. Supervisor of Foods, Feeds, Drugs and Oils

The director of agriculture shall have the power to appoint and deputize an assistant director, to be known as the supervisor of foods, feeds, drugs, and oils, who shall have charge and supervision of the division of foods, feeds, drugs, and oils, and, with the approval of the director, shall have power to appoint and deputize such inspectors, and to appoint and employ such clerical and other assistants, as may be necessary to carry on the work of the division. [L. '21, p. 47, § 87.]

§ 10846. Supervisor of Weights and Measures.

The director of agriculture shall have the power to appoint and deputize an assistant director, to be known as the supervisor of weights and measures, who shall have charge and supervision of the division of weights and measures, and, with the approval of the director, shall have power to appoint and deputize such sealers, testers, and inspectors, and to appoint and employ such clerical and other assistants, as may be necessary to carry on the work of the division. [L. '21, p. 47, § 88.]

§ 10847. Director of Agriculture—Powers and Duties.

The director of agriculture shall have power, and it shall be his duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the commissioner of agriculture, and to exercise such other powers and perform such other duties as may be provided by law. [L. '21, p. 47, § 89.]

§ 10848. Division of Agriculture—Powers and Duties.

The director of agriculture shall have the power, and it shall be his duty, through and by means of the division of agriculture:

(1) To exercise all the powers and perform all the duties relating to the state fair, commercial fertilizers, surveys and classifications of lands, quarantine measures for the protection of any agricultural crops, forest trees, forest products, or other products not otherwise protected by law, agricultural and vegetable seeds, and growing crops thereof, now vested in, and required to be performed by, the commissioner of agriculture;

(2) To require all subordinate field officers, inspectors, and employees of the department to observe and report the existence of weeds liable to become a pest and detriment to the agricultural interests of any portion of the state, giving the nature, location, and extent thereof;

(3) To, when in his judgment any weeds are or may become noxious as defined by law, notify the auditor of the county in which such weeds are found, and the clerk of each incorporated city and town in such county, giving the name and the description of such weeds and the locality in which the same are found in the county, and it shall be the duty of such county auditor and city and town clerks to publish notice of the existence of such weeds, giving the name and the description of such weeds and the locality in which the same are found in the county, in the manner and for the time provided by law for the publication of descriptions of noxious weeds furnished by the state botanists;

(4) To notify the road supervisor of any road district in which noxious weeds are found, and the county commissioners of the county, of the presence of such weeds, giving the name and the description of the weeds and the locality in which they are found, and it shall be the duty of every such road supervisor and the board of county commissioners so notified to enforce the law for protection against the spread of such noxious weeds and the destruction thereof;

(5) To exercise all the powers and perform all the duties relating to grain, hay, peas, grain and hay products, rice, beans, and other similar articles, nitrates and other fertilizers, sulphur and other chemicals, except the regulation of rates, service and facilities of public warehouses and public terminal warehouses in relation thereto, now vested in, and required to be performed by, the public service commission;

(6) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the director of farm marketing;

(7) To enforce and supervise the administration of all laws relating to agriculture, agricultural products, and agricultural interests. [L. '21, p. 48, § 90.]

§ 10849. Division of Horticulture—Powers and Duties.

The director of agriculture shall have the power, and it shall be his duty, through and by means of the division of horticulture:

(1) To exercise all the powers and perform all the duties relating to horticulture, and horticultural plants and products, now vested in, and required to be performed by, the commissioner of agriculture;

(2) To enforce and supervise the administration of all laws relating to horticulture, horticultural products, and horticultural interests. [L. '21, p. 49, § 91.]

§ 10850. Division of Dairy and Livestock—Powers and Duties.

The director of agriculture shall have the power, and it shall be his duty, through and by means of the division of dairy and livestock;

(1) To exercise all the powers and perform all the duties relating to diseases among domestic animals, the quarantine and destruction of diseased animals, now vested in, and required to be performed by, the commissioner of agriculture;

(2) To exercise all the powers and perform all the duties relating to milk, milk products, and dairies and dairy products, now vested in, and required to be performed by, the commissioner of agriculture;

(3) To exercise all the powers and perform all the duties relating to the registration of stallions and jacks, now vested in, and required to be performed by, the commissioner of agriculture;

(4) To enforce and supervise the administration of all laws relating to dairies, dairy products, livestock, and dairy and livestock interests. [L. '21, p. 49, § 92.]

§ 10851. Division of Foods, Feeds, Drugs and Oils—Powers and Duties.

The director of agriculture shall have the power, and it shall be his duty, through and by means of the division of foods, feeds, drugs, and oils:

(1) To exercise all the powers and perform all the duties formerly vested in, and required to be performed by, the state oil inspector, now vested in, and required to be performed by, the commissioner of agriculture; exercise all the powers and perform all the duties relating to foods, food products, drinks, and drugs, formerly vested in and required to be performed by the state dairy and food commissioner, now vested in and required to be performed by the commissioner of agriculture; exercise all the powers and perform all the duties relating to concentrated commercial feeding stuffs formerly vested in and required to be performed by the director of the Washington agricultural experiment station, now vested in, and required to be performed by, the commissioner of agriculture; and exercise all the powers and perform all the duties relating to foods, food products, drinks, concentrated commercial feeding stuffs, drugs, and oils and other petroleum products, now vested in, and required to be performed by, the commissioner of agriculture;

(2) To exercise all the powers and perform all the duties relating to bakeries and bakeshops, now vested in, and required to be performed by, the commissioner of agriculture;

(3) To enforce and supervise the administration of all laws relating to foods, food products, drinks, feeds, drugs, and oils, and their inspection, manufacture, and sale. [L. '21, p. 50, § 93.]

§ 10852. Division of Weights and Measures—Powers and Duties.

The director of agriculture shall have the power, and it shall be his duty, through and by means of the division of weights and measures:

(1) To exercise all the powers and perform all the duties relating to weights and measures, now vested in, and required to be performed by, the secretary of state, the superintendent of weights and measures, the deputy superintendent of weights and measures, the inspector of weights and measures, and the state sealers. [L. '21, p. 51, § 94.]

§ 10853. Director of Licenses.

The director of licenses shall have charge and general supervision of the department of licenses, receive a salary of not to exceed five thousand dollars per annum, and have power to appoint such clerical and other assistants as may be necessary to carry on the work of the department, to deputize one or more of such assistants to perform such duties in the name of the director as he may deem expedient, and to designate

one assistant as chief clerk and secretary of the department. [L. '21, p. 51, § 95.]

§ 10854. Powers and Duties of Director of Licenses.

The director of licenses shall have the power, and it shall be his duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the board of accountancy of the state of Washington, the architects' board of examiners, the barbers' examining board, the state board of chiropody, the state board of chiropractic examiners, the board of dental examiners, the board of drugless examiners of the state of Washington, the state embalmers' examining board, the board of medical examiners of the state of Washington, the state board of mining examiners, the nurses' examining board, the state optometry board, the board of osteopathic examiners of the state of Washington, the state board of pharmacy, and the state board of veterinary medical examiners, respectively, except the receiving of fees. [L. '21, p. 51, § 96.]

§ 10855. Forms.

The director of licenses shall have the power, and it shall be his duty, to prescribe the respective forms of applications for examination for licenses, certificates of registration, certificates of competency, certificates of authority, and certificates of qualifications, to practice the respective professions, callings, and occupations requiring examination, and the respective forms of licenses and certificates to be issued upon examination. [L. '21, p. 52, § 97.]

§ 10856. "License" Defined.

The word "license" wherever used in the succeeding sections shall be held and construed to mean and include license, certificate of registration, certificate of qualification, certificate of competency, certificate of authority, and any other instrument, by whatever name designated, authorizing the practice of a profession or calling, the carrying on of a business or occupation, or the doing of any act required by law to be authorized by the state. [L. '21, p. 52, § 98.]

§ 10857. Examinations for Licenses.

The director of licenses shall have the power, and it shall be his duty, from time to time, to fix such times and places for holding examinations of applicants for licenses as may be necessary and convenient, and to adopt general rules and regulations prescribing the method of conducting examinations. The governor shall, from time to time, upon the request of the director of licenses, appoint examining committees, to be composed of three persons possessing the qualifications provided by law to conduct examinations of applicants for licenses to practice the respective professions or callings for which licenses are required, which committees respectively shall prepare the necessary lists of examination questions, conduct the examinations, which may be either oral or written or partly oral and partly written, and shall make and file with the direc-

tor of licenses lists, signed by all the members of the committee conducting the examination, showing the names and addresses of all applicants for licenses who have successfully passed the examination, and showing separately the names and addresses of the applicants who have failed to pass the examination, together with all examination questions and the written answers thereto submitted by the applicants. Each member of such committee shall receive ten dollars per day for each day spent in conducting the examination and in going to and returning from the place of examination, and his actual and necessary traveling expenses. [L. '21, p. 52, § 99.]

§ 10858. Applications and Fees for Licenses.

All applications for examinations for licenses shall be filed with the state treasurer, together with the fee required by law to be paid in advance of the examination, and it shall be the duty of the state treasurer, on the next business day after the receipt of any such application and fee, to transmit the application, accompanied by his duplicate receipt for the fee, to the department of licenses, and deposit in the state treasury to the credit of the proper funds the balance of moneys received as advance fees for examinations on hand at the close of the preceding business day, after making all corrections and refunding all overpayments and other sums authorized by law to be refunded. It shall be the duty of the secretary of the department of licenses, upon the receipt of any application for examination accompanied by the treasurer's duplicate receipt for the advance fee, to notify the applicant of the day and place of the next ensuing examination applied for. [L. '21, p. 53, § 100.]

§ 10859. Issue of Licenses.

At the close of each examination it shall be the duty of the secretary of the department of licenses to cause to be prepared the proper licenses, where no further fee is required by law to be paid, and to issue to the successful applicants therefor such licenses, signed by the director of licenses and attested by the secretary under the seal of the department of licenses, and to notify all successful applicants for licenses, where a further fee is required by law to be paid, of the fact that they are entitled to receive such license upon the payment of such further fee to the state treasurer, and to notify all applicants who have failed to pass the examination of that fact. It shall be the duty of the state treasurer, upon the receipt of any such further fee required by law, to transmit his duplicate receipt therefor to the department of licenses, and the secretary, upon receiving such duplicate receipt, shall cause to be prepared and to be issued to the successful applicants the licenses in the manner provided for the issuance of licenses at the close of examinations. In all cases where an unsuccessful applicant is by law entitled to a refund of the whole or any portion of the advance fee paid, the secretary of the department of licenses shall certify that fact to the state treasurer, and the state treasurer shall refund the amount provided by law out of the current receipts of advance fees for examinations. [L. '21, p. 54, § 101.]

§ 10860. Notice to Renew Licenses.

It shall be the duty of the secretary of the department of licenses, on or before thirty days prior to the renewal date of any license which by law may be, or is required to be, renewed, to notify the holder of such license of such renewal date, the amount of the renewal fee required, and that such fee shall be paid to the state treasurer. Upon the next business day after the receipt of any such renewal fee the state treasurer shall transmit his duplicate receipt therefor to the department of licenses and, after making all corrections and refunding all overpayments, to deposit the balance remaining on hand at the close of the preceding business day in the state treasury to the credit of the proper funds. Upon receiving such duplicate treasurer's receipt the secretary of the department of licenses shall cause to be prepared the proper renewal certificate, signed by the director of licenses and attested by the secretary under the seal of the department, and issue the same to the licensee. [L. '21, p. 54, § 102.]

§ 10861. Violations by Holders of Licenses—Hearings.

Whenever there shall be filed with the director of licenses any complaint charging that the holder of any license has been guilty of any act or omission which by the provisions of the law under which the license was issued would warrant the revocation of his license, such complaint being verified in the manner provided by such law, the director of licenses shall request the governor to appoint, and the governor shall appoint, two qualified practitioners of the profession or calling of the person charged, who with the director shall constitute a committee to hear and determine the charges and, in case the charges are sustained, to impose the penalty provided by law. The decision of any two members of such committee shall be the decision of the committee. The appointed members of such committee shall receive ten dollars per day for each day spent in the performance of their duties and in going to and returning from the place of hearing, and their actual and necessary traveling expenses. [L. '21, p. 55, § 103.]

§ 10862. Director of Licenses—Powers and Duties.

The director of licenses shall have the power, and it shall be his duty:

(1) To exercise all the powers and perform all the duties relating to the issuance and renewal of licenses, now vested in, and required to be performed by, the state fish commissioner, except the receiving of fees;

(2) To exercise all the powers and perform all the duties relating to the issuance of licenses to engage in the business of breeding and selling wild animals, wild birds or game birds, and the selling at retail of the carcasses thereof or parts thereof, now vested in, and required to be performed by, the state fish commissioner as ex officio state game warden, except the receiving of fees;

(3) To exercise all the powers and perform all the duties relating to the issuance of licenses to itinerant vendors or peddlers of any medicine, drug, nostrum, ointment, or preparation for the treatment of disease

or injury, now vested in and required to be performed by the board of pharmacy of the state of Washington, except the receiving of fees;

(4) To exercise all the powers and perform all the duties relating to the issuance of licenses to aliens to carry or have in their possession firearms, now vested in, and required to be performed by, the state auditor, except the receiving of fees;

(5) To exercise all the powers and perform all the duties relating to licenses of corporations, now vested in, and required to be performed by, the secretary of state, excepting the receiving of fees;

(6) To exercise all the powers and perform all the duties relating to motor vehicle licenses and permits to engage in or carry on the business of carrying or transporting passengers for hire in motor propelled vehicles, now vested in, and required to be performed by, the secretary of state, except the receiving of fees;

(7) To exercise all the powers and perform all the duties relating to licenses to engage in or continue the business of installing wires to convey electric current, or electric apparatus to be operated by such current, now vested in, and required to be performed by, the secretary of state, except the receiving of fees. [L. '21, p. 55, § 104.]

§ 10863. Applications for Licenses—Filing With State Treasurer.

All applications for the licenses mentioned in the preceding section and for renewals thereof shall be filed with the state treasurer, together with the fee required by law to be paid in advance, and it shall be the duty of the state treasurer, on the next business day after the receipt of any such application and fee, to transmit the application, accompanied by his duplicate receipt for the fee, to the department of licenses, and to deposit in the state treasury to the credit of the proper funds the balance of moneys received as advance fees for licenses and renewals remaining on hand at the close of the preceding business day, after making all corrections and refunding all over-payments. Upon the receipt of any such application for a license or a renewal thereof, accompanied by the treasurer's duplicate receipt for the advance fee, the director of licenses shall cause to be prepared and issue to the applicant the license or renewal applied for, signed by the director of licenses and attested by the secretary under the seal of the department of licenses. [L. '21, p. 57, § 105.]

§ 10864. Appeals from Director of Licenses.

Any person feeling himself aggrieved by the refusal of the director of licenses to issue any license provided for in this act, or to renew the same, or by the revocation or suspension of any license issued under the provisions of this act or any law being administered under this act, shall have a right of appeal from the decision of the director of licenses to the superior court of Thurston county, which appeal shall be taken, prosecuted, heard, and determined, as near as may be, in the manner provided by law for taking, prosecuting, hearing, and determining appeals from justices' courts to superior courts. No appeal shall lie from the decision of the superior court of Thurston county on such appeals from

the director of licenses, but such decisions may be reviewed as to matters of law by the supreme court upon writs of review sued out in the manner provided by law. [L. '21, p. 57, § 106.]

§ 10865. Department of Fisheries and Game—Divisions.

The department of fisheries and game shall be organized into, and consist of, the state fisheries board and two divisions, to be known respectively as, (1) the division of fisheries, and (2) the division of game and game fish. The director of fisheries and game shall have charge and general supervision of the department, and shall receive a salary of not to exceed six thousand dollars per annum, and shall have power to appoint and deputize such clerical and other assistants as may be necessary for the general administration of the department. No person shall be eligible to appointment as, or to hold the office of, director of fisheries and game unless he has general knowledge of fishing conditions and of the fishing industry in this state, nor if he has any financial interest in the fishing industry or any industry directly connected therewith. [L. '21, p. 58, § 107.]

§ 10866. Food Fish Preserved and Protected.

The food fishes in the waters of the state of Washington shall be preserved, protected, and perpetuated, and to that end such food fishes shall not be taken at such times or places, by such means, or in such manner, as will impair the supply thereof. [L. '21, p. 58, § 108.]

§ 10867. State Fisheries Board.

The governor shall have the power, and it shall be his duty, to appoint three citizens of this state who shall have a general knowledge of fish and fisheries of the waters of and adjacent to the state of Washington, as members of, and who shall constitute, the state fisheries board to serve at the pleasure of the governor, and who shall receive their actual and necessary expenses while engaged in the performance of their duties. [L. '21, p. 58, § 109.]

§ 10868. Powers of State Fisheries Board.

The state fisheries board shall have the power to investigate the habits, supply, and economic uses of, and to classify, the food fishes in the waters of the state of Washington and, from time to time, make, adopt, amend, and promulgate rules and regulations governing the taking thereof, (1) fixing the times when the taking of the several classes of, and all, food fishes is prohibited, (2) specifying and defining the places and waters in which the taking of the several classes of, and all, food fishes is prohibited, and (3) defining, fixing, and prescribing the kinds of gear, appliances, or other means that may be used in taking the several classes of food fishes, and the times, places and manner of using the same. [L. '21, p. 59, § 110.]

§ 10869. Repealing Clause—Exceptions as to Fishing Laws.

All laws relating to the matters referred to in the last preceding section are hereby repealed as statutes, and are hereby constituted and

declared to be operative and to remain in force as the rules and regulations of the state fisheries board, until such time as they or any of them are amended, modified, or revoked by the state fisheries board: Provided, that holders of existing fishing locations shall hold and enjoy the same with the exclusive right to operate their fishing appliances thereon under the rules and regulations of said board at all times when fishing in the waters where such locations are situated shall be permitted. [L. 21, p. 59, § 111.]

§ 10870. Rules and Regulations Published.

All rules and regulations of the state fisheries board, and all amendments to, or modifications or revocations of, existing rules and regulations shall be made and adopted by a majority vote of the board, by resolution entered and recorded in the minutes of the board, and shall be promulgated by publication in a newspaper of general circulation published at the state capital, and shall take effect and be in force at times specified therein. [L. '21, p. 59, § 112.]

§ 10871. Violations of Rules and Regulations.

Any person violating or failing to comply with any rules or regulations of the state fisheries board shall be guilty of a gross misdemeanor. [L. '21, p. 60, § 113.]

§ 10872. Supervisor of Fisheries.

The director of fisheries and game shall have the power to appoint and deputize an assistant director, to be known as the supervisor of fisheries, who shall have charge and supervision of the division of fisheries, and have power, with the approval of the director, to appoint and employ such superintendents, inspectors, engineers, patrolmen, and such clerical and other assistants as may be necessary to carry on the work of the division. No person shall be eligible to appointment as, or hold the office of, supervisor of fisheries, unless he has a practical knowledge of the propagation of fish and of the fishing industry in this state, nor if he has any financial interest in the fishing industry or any industry directly connected therewith. [L. '21, p. 60, § 114.]

§ 10873. Supervisor of Game and Game Fish.

The director of fisheries and game shall have the power to appoint and deputize an assistant director, to be known as the supervisor of game and game fish, who shall have charge and supervision of the division of game and game fish, and have power, with the approval of the director, to appoint and employ such superintendents, deputy wardens, and such clerical and other assistants as may be necessary to carry on the work of the division. No person shall be eligible for appointment as, or hold the office of, supervisor of game and game fish, unless he has practical knowledge of the propagation of game and game fish and a general knowledge of the game and game fish conditions in the state. [L. '21, p. 60, § 115.]

§ 10874. Division of Fisheries—Powers and Duties.

The director of fisheries and game shall have the power, and it shall be his duty, through and by means of the division of fisheries:

(1) To exercise all the powers and perform all the duties relating to food fish and shell-fish, now vested in, and required to be performed by, the state fish commission;

(2) To exercise all the powers and perform all the duties relating to food and shell fish, now vested in, and required to be performed by, the state fish commissioner;

(3) To administer and enforce all rules and regulations adopted by the state fisheries board;

(4) To exercise such other powers and perform such other duties as may be required by law. [L. '21, p. 60, § 116.]

§ 10875. Director of Fisheries and Game—Powers and Duties.

The director of fisheries and game shall have the power, and it shall be his duty, through and by means of the division of game and game fish:

(1) To exercise all the powers and perform all the duties relating to game and game fish, now vested in, and required to be performed by, the state fish commissioner as ex-officio state game warden, the chief game warden, and the chief deputy game warden;

(2) To exercise such other powers and perform such other duties as may be required by law. [L. '21, p. 61, § 117.]

§ 10876. Chief Departmental Assistants.

The director of each of the departments of the state government created by this act shall have the power, from time to time, to designate and deputize one of the assistant directors of his department to act as, and to be, the chief assistant director, who shall have charge and general supervision of the department in the absence of, or in case of the disability of, the director, and who shall, in case a vacancy occurs in the office of director, continue in charge of the department until a director is appointed and qualified, or the governor shall appoint an acting director. [L. '21, p. 61, § 118.]

§ 10877. Commissioner of Public Lands—Powers and Duties.

The commissioner of public lands shall have the power, and it shall be his duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the board of state land commissioners, except the power and duty to act and serve as the commission mentioned in section 1 of Article XV, and as the board of appraisers mentioned in section 2 of Article XVI, of the state Constitution; and exercise all the powers and perform all the duties now vested in and required to be performed by, the state oyster commission. [L. '21, p. 61, § 119.]

§ 10878. Inheritance Taxes and Escheats.

The attorney general shall have the power, and it shall be his duty, to exercise all the powers and perform all the duties relating to inheri-

tance taxes and escheats, now vested in, and required to be performed by, the state tax commissioner. [L. '21, p. 62, § 120.]

§ 10879. Record of State Property.

The state auditor shall have the power, and it shall be his duty, to install and maintain in his office, on forms to be furnished by the department of efficiency, and in accordance with classifications prescribed by that department, a controlling ledger in which shall be entered the valuations of all property, real, personal, and mixed, owned by the state, and to keep such ledger continually posted as capital outlays are made by the various officers, institutions, and departments of the state government, and to, once each year, enter therein and charge such depreciations as may be required by uniform system of accounts to be prescribed by the department of efficiency. [L. '21, p. 62, § 121.]

§ 10880. Disposal of Property, Records, etc., of Abolished Offices, Boards, etc.

In all cases where an existing state office, board, commission, bureau, or department of the state is abolished by this act, or where the powers and duties vested in, and required to be performed by, any existing officer, board, commission, bureau, or department, are transferred to, vested in, and required to be performed by, a department or committee created by this act, or a state officer, all books, papers, maps, charts, plans, records, and all other equipment or property in the possession of such existing officer, board, commission, bureau, or department, or any officer or member thereof, and pending business in any way pertaining to the powers and duties of such office, board, commission, bureau, or department abolished by this act, shall be delivered and transferred to the administrative and executive head of the department, or the committee or state officer to which his or its powers and duties are transferred. In case such powers and duties are divided between two or more departments, committees, or state officers, each of said departments, committees, or officers shall receive such books, papers, maps, charts, plans, records, other equipment and property, and pending business as pertain to the powers and duties transferred to that department, committee, or officer. In all cases where any question shall arise as to the proper custody of any such books, papers, maps, charts, plans, records, other equipment and property, and pending business, the governor shall determine the question. [L. '21, p. 62, § 122.]

§ 10881. Distribution of Powers and Duties Generally.

In all cases where an existing state office, board, commission, bureau, or department is abolished by this act, or where the powers and duties vested in, and required to be performed by, any existing officer, board, commission, bureau, or department are transferred to, vested in, and required to be performed by, a department or committee created by this act, or a state officer, all employees of such office, board, commission, bureau, or department so abolished, or the powers and duties of which are so transferred, as the director of the department or the committee or officer to which the powers and duties of such office, board, commission,

bureau, or department are transferred may select, shall continue to perform their usual duties upon the same terms and conditions as heretofore, until removed, or appointed to positions in accordance with the provisions of this act relative to such department, or transferred to some other department. In all cases where the powers and duties of any such existing office, board, commission, bureau, or department are divided between two or more of the departments or committees created by this act, or state officers, each of such departments, committees, or officers shall receive, on the above terms and conditions, such of the employees of said office, board, commission, bureau, or department as are selected by the respective directors of the departments, or by the committee, or state officer to which the functions thereof are by this act transferred. [L. '21, p. 63, § 123.]

§ 10882. Pending Matters, Completion of.

All petitions, hearings, and other proceedings pending before any existing officer, board, commission, bureau, or department which is abolished by this act, or the powers and duties of which are vested in, and required to be performed by, a department or committee created by this act, or state officer, and all prosecutions, legal or other proceedings and investigations begun by any such officer, board, commission, bureau, or department, and not completed at the time of the taking effect of this act, shall continue and remain in full force and effect notwithstanding the passage of this act, and may be completed before or by the department, committee, or officer which succeeds to the powers and duties of such office, board, commission, bureau, or department. [L. '21, p. 64, § 124.]

§ 10883. Existing Orders, Rules, etc., to Continue.

All orders, rules, and regulations made by any existing officer, board, commission, bureau, or department which is abolished by this act, or the powers and duties of which are vested in, and required to be performed by, a department or committee created by this act, or a state officer, shall remain in full force and effect until revoked or modified in accordance with law by the department, committee, or officer which succeeds to the powers and duties of such existing office, board, commission, bureau, or department. [L. '21, p. 64, § 125.]

§ 10884. Existing Contracts and Obligations.

All existing contracts and obligations of the officers, boards, commissions, bureaus, or departments abolished by this act, or the powers and duties of which are vested in, and required to be performed by, a department or committee created by this act, or a state officer, shall remain in full force and effect, and shall be performed by the department, respective departments, committees, or state officers to which the powers and duties of such existing office, board, commission, bureau, or department are transferred. [L. '21, p. 65, § 126.]

§ 10885. Official Reports.

All reports required by law to be made by any existing office, board, commission, bureau, or department abolished by this act, or the powers and duties of which are vested in, and required to be performed by, a

department or committee created by this act, or a state officer, shall hereafter be made by the executive and administrative head of the department, or the committee or officer to which the powers and duties of such existing office, board, commission, bureau, or department are transferred. [L. '21, p. 65, § 127.]

§ 10886. Inspections and Examinations—Assistance.

In all cases where by this act power is vested in a department or officer to inspect, examine, secure data or information from, or procure assistance from, another department or officer, it shall be the duty of such other department or officer to submit to such inspection or examination, and to furnish the data, information, or assistance required. [L. '21, p. 65, § 128.]

§ 10887. Vesting of Powers and Duties under Former Laws—Penalties.

In all cases where any powers and duties, which have heretofore been vested in, or performed by, any existing officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof, are by this act transferred, either in whole or in part, to, or vested in and required to be performed by, a department or committee created by this act, or state officer, such powers and duties shall be vested in, and shall be performed by, the department, committee, or officer to which the same are hereby transferred, and not otherwise. And every act done in the exercise of such powers and duties shall have the same legal effect as if done by the former officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof. Every person and corporation shall be subject to the same obligations and duties, and shall have the same rights arising from the exercise of such powers and the performance of such duties, as if such powers and duties were exercised and performed by the officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof, designated in the respective laws which are to be administered by the departments or committees created by this act, or state officers. Every person and corporation shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any such obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in the exercise of, such power or duty, by the officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof, designated in the respective laws which are to be administered by the departments or committees created by this act, or state officers. [L. '21, p. 65, § 129.]

§ 10888. Civil and Criminal Liability of Officers and Employees.

Every officer or employee of any department created by this act, who shall commit any act prohibited, or fail to perform any duty required, by the law creating the office or employment whose duties are transferred by this act to the department of which he is an officer or employee, shall be subject to the same penalty or penalties, civil or criminal, as are prescribed by such law for the commission of such prohibited act or the failure to perform such duty. [L. '21, p. 66, § 130.]

§ 10889. Reports and Notices Required Under Former Laws.

In all cases where reports or notices are now required to be made or given, or papers or documents furnished or served by any person, to or upon any existing officer, board, commission, bureau, or department, or any officer, subordinate officer, or employee thereof, abolished by this act, or any existing officer, board, commission, bureau, or department the powers and duties of which are vested in, and required to be performed by, a department or committee created by this act, or by a state officer, the same shall be made, given, furnished, or served in the same manner, to and upon the department, committee, or officer upon which are devolved by this act the powers and duties now vested in, and required to be performed by, such existing officer, board, commission, bureau, or department, or officer, subordinate officer, or employee thereof. [L. '21, p. 67, § 131.]

§ 10890. Litigation Pending.

This act shall not affect any act done, ratified, or confirmed, or any right accrued or established, or any action or proceeding had or commenced in a civil or criminal cause before this act takes effect, but such actions or proceedings may be prosecuted and continued by the department or committee created by this act, or the state officer, having jurisdiction under this act of the subject matter to which such litigation or proceeding pertains. [L. '21, p. 67, § 132.]

§ 10891. Vacations.

Each subordinate officer and employee of the several offices, departments, and institutions of the state government shall be entitled, during each twelve months' period, to fourteen days' leave of absence with full pay. [L. '21, p. 67, § 133.]

§ 10892. Location of Offices.

The governor shall have the power in his discretion to require all administrative departments of the state government and the appointive officers thereof, other than those created by this act, to maintain their principal offices at the state capital, in rooms to be furnished by the department of business control. [L. '21, p. 68, § 134.]

§ 10893. Offices, Boards, etc., Abolished.

From and after the thirty-first day of March, 1921, the following offices, boards, commissions, bureaus, and departments of the state government heretofore created by law shall be and are hereby abolished, viz.: The board of accountancy of the state of Washington, the agricultural advisory board, the commissioner of agriculture, the assistant commissioner of agriculture in charge of the division of agriculture, the assistant commissioner of agriculture in charge of the division of horticulture, the assistant commissioner of agriculture in charge of the division of dairy and livestock, the assistant commissioner of agriculture in charge of the division of foods, feeds, drugs, and oils, the architects' board of examiners, the public archives commission, the bank commissioner, the barbers' examining

board, the state board of finance, the state board of control, the bureau of inspection and supervision of public offices, the state capitol commission, the state board of chiropody, the state board of chiropractic examiners, the state claim agent, the Columbia basin survey commission, the board of dental examiners, the board of drugless examiners of the state of Washington, the state embalmers' examining board, the state board of equalization, the director of farm marketing, the state forester and fire warden, the state fish commissioner, the state fish commission, the state board of forest commissioners, the chief game warden, the chief deputy game warden, the board of geological survey of the state of Washington, the state geologist, the state grain inspector, the state deputy grain inspectors, the state board of health, the state commissioner of health, the state highway commissioner, the state highway board, the state hotel inspector, the state hydraulic engineer, the Industrial Welfare Commission, the industrial insurance department, the bureau of labor, the commissioner of labor, the state library commission, the state library advisory board, the state log-scalers, the board of medical examiners of the state of Washington, the state medical aid board, the local aid boards, the state board of mining examiners, the nurses' examining board, the state optometry board, the board of osteopathic examiners of the state of Washington, the state oyster commission, the state board of park commissioners, the state board of pharmacy, the public service commission, the state reclamation board, the board of managers of the Washington state reformatory, the state safety board, the superintendent of capitol buildings and grounds, the state tax commissioner, the state board of veterinary medical examiners, the state board of voting machine examiners, the department of weights and measures, the state weighers of lumber and shingles, the board of directors of the women's industrial home and clinic, and the hop inspector. [L. '21, p. 68, § 135.]

§ 10894. Repealing Clause.

All acts and parts of acts in conflict with the provisions hereof are hereby repealed as of March 31, 1921. [L. '21, p. 69, § 136.]

§ 10895. Partial Invalidity.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. [L. '21, p. 69, § 137.]

§ 10896. Appointive State Officers and Employees—Change of Compensation.

Wherever the salary or compensation of any appointive state officer or employee is fixed by statute, it may be hereafter increased or decreased in the manner provided by law for the fixing of the salaries or compensation of other appointive state officers or employees: Provided, however, that the provisions of this act shall not apply to the salary of the directors of departments provided for in this chapter. [L. '21, p. 155, § 1.]

§ 10897. Exercise of Powers and Duties of Abolished Offices, etc.

The exercise of all powers and the performance of all duties which have been, subsequent to February 9, 1921, vested in or imposed upon any of the officers, boards, commissions, bureaus, or departments of the state government, enumerated in section 10893 are, at such time or times subsequent to March 31, 1921, as the act or acts so empowering or imposing, might otherwise become effective, hereby conferred and imposed upon the officers, committees, boards, or departments of the state government, created by this chapter, which shall have been, by this chapter, authorized to exercise the powers and perform the duties of the respective officers, boards, commissions, bureaus, and departments of the state government, abolished by this chapter. [L. '21, p. 355, § 1.]

§ 10898. Powers and Duties of Offices Created.

Whenever, subsequent to February 9, 1921, powers and duties have been vested in or imposed upon any officer, board, commission, bureau, or department of the state government other than those specified in section 10893, which relate to the performance of the governmental functions which have been transferred to some other officer, committee, board or department of the state government by this chapter, such powers and duties shall, from and after the first day of April, 1921, be exercised and performed by the officers, committees, boards, or departments of the state government created by this chapter and to whom such functions have been transferred. [L. '21, p. 356, § 2.]

"This chapter" applies to all the foregoing sections except the last two previous sections.

CHAPTER II.**STATE BOARD OF CONTROL.**

Hospitals for insane: See supra, §§ 6917—6922.

State penitentiary: See supra, §§ 10211—10275.

Quarries and rock-crushers: See supra, §§ 6854—6859.

Institution for feeble-minded: See supra, § 4657.

Institution for deaf and blind: See supra, §§ 4644—4649.

State training school: See §§ 4627—4629, 10301—10308.

§ 10899. [8933.] Duties—Control of State Institutions—Reports—Uniform Accounts.

The state board of control shall have full power to manage and govern the following public institutions: The Western State Hospital, the Eastern State Hospital, the Northern State Hospital, the State Penitentiary, the State Training School, the State School for Girls, the State Soldiers' Home, the Washington Veterans' Home, the State Institution for the Feeble-minded, the State School for the Deaf and State School for the Blind, subject only to the limitations contained in this act and other acts relating to the management of said institutions; and shall have the care, custody and control of the state capitol buildings and grounds, with power to designate rooms therein to be occupied by the various state officials. It shall be the duty of the state board of control to examine into the conditions and needs of the aforesaid several institutions, and on or before the first day of December of the year preceding the session of the legislature,

report in writing to the governor the condition of each of said institutions, and what sum of money it deems advisable to appropriate for its maintenance and betterment, having reference to the probable growth of such institution, its general welfare and the object and purpose of its creation. [L. '15, p. 308, § 1. Cf. L. '01, p. 250, § 3; L. '07, p. 378, § 2.]

For former laws, see L. '97, pp. 304—307; Bal. Code, §§ 2621—2629.

"State training school" is substituted for "state reform school."

"This act" includes §§ 10899—10907, 10909, 10910, 10915, 10917 and 10918.

See supra, §§ 8266—8269, state board of accountancy.

See supra, § 10229, annual report of penitentiary.

See supra, § 10794, general duties devolve upon director of business control.

See supra, § 10818, duty as to custodial care of inmates of state institutions devolves upon director of health.

See supra, § 10803, duty as to paroles devolve upon parole boards.

See supra, § 10893, state board of control abolished.

§ 10900. [8934.] Office at Capitol—Salary of Employees—Duties.

The state board of control shall maintain its offices at the state capitol, and shall employ a competent bookkeeper and accountant, who shall act as secretary of the board; also such additional help as may be required for the conduct of the work of the board. The salaries of the employees of the board shall be fixed by the board, but shall not in any one year exceed the sum of three thousand five hundred (\$3,500) dollars. The board shall cause to be kept at its office a proper and complete system of books and accounts with each public institution under its control, which shall clearly show every expenditure authorized and made thereat; the said books shall exhibit an account of all appropriations made by the legislature for such institutions, and of all other funds thereof. It shall prescribe the form of vouchers, records and the methods of keeping accounts at and by each of the institutions under its control; said vouchers, records and methods of accounts of each of the said institutions to be as nearly uniform as possible. The board, or any member of the board, shall have the power to examine and check the records of the institutions at any time. The board shall also have the power to authorize its bookkeeper and accountant, or any other employee, to proceed to any of the institutions at any time for the purpose of examining and checking the records, taking inventory of the property of the institutions, or any department thereof, or for any other purpose that in the opinion of the board might be deemed necessary. The said employee shall, while engaged in said work, receive, in addition to his salary, pay for actual and necessary expenses incurred in the discharge of the special duty, said expenses to be paid from the fund for the maintenance of the institution. Upon the completion of any special work provided for in this section the board shall cause the employee doing the said special work to make a full and complete report of the said work to the board within ten (10) days after the completion of the same. [L. '01, p. 251, § 4; L. '07, p. 379, § 3.]

See notes to § 10899, supra.

§ 10901. [8935.] Inspection of State Institutions.

It shall be the duty of the board to visit, at least once each three months, each of the public institutions under its control at which times

meetings of the board shall be regularly held at the said institutions. During such visitations the board shall thoroughly inspect all of the departments of, and investigate the financial condition and management of said institutions. For the purpose of aiding in any investigation, the board shall have the power to summon and compel the attendance of witnesses, to examine them under oath, which any member of the board shall have the power to administer. Said board shall also have access to all books, papers and property material to any investigation, and may order the production of any books, papers or property material thereto. Witnesses, other than employees of the state, shall be entitled to the same fees as in civil cases in a superior court. It shall be the duty of the board to cause the testimony so taken to be transcribed and filed in the office of the board within ten days after the same is taken, or as soon thereafter as practicable. Any person refusing or failing to obey the orders of the board issued under the provisions of this section, or to give or produce evidence when required, shall be reported by the board to the superior court or any judge thereof, and shall be dealt with by the court or judge as for contempt of court. [L. '01, p. 252, § 5; L. '07, p. 380, § 4.]

See notes to § 10899, *supra*.

§ 10902. [8936.] Superintendents of Institutions—Salaries—Assistants—Removal.

It shall be the duty of the board to appoint a chief executive officer for each of the public institutions under its control, who shall devote his entire time to the duties of his office and whose title shall be "Superintendent." Said appointment shall be for a term of four years: Provided, however, that at any time the superintendent of such an institution may be removed by the board in its discretion. The salaries to be paid to the superintendents shall be fixed by the board, and shall not exceed the amounts herein indicated. Superintendents of hospitals for the insane, not to exceed four thousand (\$4,000) dollars per annum; superintendent of state penitentiary, not to exceed eighteen hundred (\$1,800) dollars per annum; superintendent of the state training school, not to exceed eighteen hundred (\$1,800) dollars per annum; superintendent of the state soldiers home, not to exceed the sum of twelve hundred and fifty (\$1,250) dollars per annum; superintendent of the state school for the deaf and the blind, not to exceed eighteen hundred (\$1,800) dollars per annum; superintendent of the state institution for feeble-minded, not to exceed twelve hundred (\$1,200) dollars per annum. The superintendent of each such institution shall have the power to appoint all assistants and employees required for the management of the institution placed in his charge, the number of said assistants and employees to be determined and fixed by the board. The superintendent of any such institution may, at his pleasure, discharge any person therein employed. It shall be the duty of the board to investigate any and all complaints made against the chief executive officer of any such institution and also against any other officer or employee of such an institution, if the same has not been investigated and reported upon by the superintendent to the board. The board shall have the power to remove any chief executive officer of such institution in accordance with the pro-

visions of this section and may after investigation, for good and sufficient reasons, order the discharge of any other officer or employee thereof. The board shall fix salaries of the officers and employees of the public institutions under its control, on or before the first day of April of each year, to be paid during the year commencing April 1st, and no change shall be made in the salaries to be paid, excepting at the time prescribed in this section: Provided, that no person shall be eligible to serve as superintendent of either hospital for the insane who has had less than three years' experience as a practicing physician after receiving his diploma or license. [L. '01, p. 252, § 6; L. '07, p. 381, § 5.]

"Training school" substituted for "reform school."

See supra, § 10213, duties and residence of superintendent of penitentiary.

See supra, § 10728, appointment of superintendent for soldiers' home, and bond of.

See notes to § 10899, supra.

§ 10903. [8937.] Employees at Institutions—Quarters.

The superintendent of each of the public institutions under the control of the board, the assistant physicians, the steward and accountant and the chief engineer of the hospitals for the insane shall be furnished with quarters, household furniture, board, fuel and lights for themselves and their families: Provided, that the board of control may, by unanimous vote of the full board, when in their opinion any public institution would be benefited by so doing, extend this privilege to an officer at any of the public institutions under the control of the board. The word "family" or "families" used in this section shall be construed to mean only the wife and minor children of an officer. Employees shall be furnished with quarters and board for themselves. [L. '01, p. 254, § 7; L. '07, p. 382, § 6.]

See notes to § 10899, supra.

§ 10904. [8938.] Gifts to Institutions.

The board shall have the power to receive, hold and manage all real and personal property made over to them by gift, devise or bequest, and the proceeds and increase thereof shall be used for the benefit of the institution for which it is received. [L. '01, p. 254, § 8.]

See notes to § 10899, supra.

§ 10905. [8939.] Rules for Institutions.

The board is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this act, the duties of the persons connected with the management of such public institutions. [L. '01, p. 254, § 9; L. '07, p. 382, § 7.]

See notes to § 10899, supra.

"This act": See note to § 10899.

§ 10906. [8940.] Purchase of Supplies—Notice—Bids.

The board of control is hereby empowered and required to purchase all of the supplies needed for the proper support and maintenance of the institutions placed in its charge. Said supplies to be purchased, whenever practicable, under contract, notice of the call for the same to be published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder, if the price bid is a fair and reasonable one and not greater than the market value and price, and if the bid covers the kind and quality of article or articles required by the board. The board is authorized to require such security as it may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract for supplies is awarded. The board shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so and readvertise in accordance with the provisions of this section. The board shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the board, faithfully comply with the same. [L. '01, p. 254, § 10.]

See notes to § 10899, *supra*.

See *supra*, § 10272, purchase of tools, etc., for penitentiary.

§ 10907. [8941.] Superintendents' Estimates of Supplies—Officials' Interest in Purchase.

It shall be the duty of the superintendents of the several public institutions to cause to be prepared estimates of the supplies required for the proper conduct and maintenance of the institutions under their charge, covering periods to be fixed by the board of control, and to forward the same to the board in accordance with its directions. The board shall have the power to revise the estimates made, either as to quantity or quality, and shall make the call for supplies in accordance with the revised list, a copy of which shall be forwarded to the superintendent of the institution for which the call is made. The board shall purchase the supplies at such times and for such periods as in its judgment may be for the best interests of the institution, in accordance with the provisions of this act.

No superintendent or other officer or employee of a public institution shall have the authority to purchase any article for the use of the institution of which they have charge or in which they are employed, except in case of extreme necessity, and when the superintendent shall consider such articles absolutely necessary; that all supplies shall be purchased by the board of control in accordance with the provisions of this act. It shall be the duty of the superintendent in each institution to furnish to the board on or before the fifth day of each month a full and complete statement showing the supplies or articles purchased by him, upon his authority, without the authority of the board, and to state therein the reasons for the purchase being made. No member of the board of control, employee in the office of the board, or

officer or employee of any institution under the control of the board, shall be directly or indirectly interested in the purchase of supplies; or any other contracts entered into by and for any of the institutions under the control of the board, and if so interested he shall forfeit his office, such contracts shall be void and such person shall be liable to the state upon his official bond for all damages sustained. [L. '01, p. 255, § 11; L. '07, p. 383, § 8.]

See notes to § 10899, *supra*.

"Act": See note to § 10899.

§ 10908. [8942.] Fire, and Destruction of Buildings—Reconstruction.

If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the board of control, by and with the advice and consent of the governor, attorney general, and secretary of state, and the expenses thereof paid out of any funds in the state treasury not otherwise appropriated by law, not to exceed twenty-five thousand dollars. [L. '91, p. 363, § 29; 1 H. C., § 1169.]

See notes to § 10899, *supra*.

See *supra*, § 10225, construction of buildings at penitentiary.

See note to § 10211.

§ 10909. [8943.] Buildings—Employment of Architects—Bids.

The power is also vested in the board to employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes or additions to the buildings already constructed, to employ competent persons to superintend the construction of new buildings or repairs, changes or additions to the buildings already constructed, to call for bids and award contracts for the erection of new buildings, or for repairs, changes or additions to buildings already constructed: Provided, however, that the board shall have the right to proceed with the erection of any new building, or repairs, changes or additions to any buildings already constructed, employing thereon the labor of the inmates of the institution, when in their judgment the improvements can be made in as satisfactory a manner and at a less cost to the state by so doing. In calling for bids for improvements to be made the board shall follow the provisions of section 10906, which provisions are hereby made to and shall cover all calls made and contracts awarded under this section. [L. '01, p. 256, § 12.]

See notes to § 10899, *supra*.

See *supra*, § 10225, limit of cost of new penitentiary buildings, and § 10918, *infra*.

§ 10910. [8944.] Records of Inmates of Institutions.

The board shall keep at its office, accessible only to members of the board, the secretary and proper clerks, except by the consent of the board, a record showing the residence, sex, age, nativity, occupation, civil condition and date of entrance, or commitment of every person, patient, inmate or convict in the several public institutions governed by

the board, the date of discharge of every person from the institution, and whether such discharge is final: Provided, that in addition to this information the superintendents for the hospitals for the insane shall also state the condition of the person at the time of leaving the institution. The record shall also state if the person is transferred from one institution to another and to what institution; and if dead the date and cause of death. This information shall be furnished to the board by the several institutions, and also such other obtainable facts as the board may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each public institution, upon blank forms which the board may prescribe. [L. '01, p. 256, § 13; L. '07, p. 384, § 9.]

See notes to § 10899, *supra*.

See *supra*, §§ 10244, 10252, records to be kept by superintendent of penitentiary.

§ 10911. [8946.] Bills of Purchase for Insane Hospitals, How Audited and Paid.

All itemized bills of purchase made [for insane hospitals], when having been examined by the board of control, and found correct, shall be certified by the president and secretary of the board then sitting, and the same transmitted to the auditor of state, who shall audit the same and draw his warrant on the state treasurer for the amount, and the said treasurer is hereby authorized and required to pay the same out of any money in the treasury not otherwise appropriated. [Cf. L. '77, p. 229, § 24; Cd. '81, § 2271; L. '90, p. 485, § 10; 1 H. C., § 1276.]

"Board of audit and control," changed to "board of control." The present force of this and the next three sections is doubtful. So far as not inconsistent with the preceding sections, they are expressly continued in force by § 10918, *infra*.

§ 10912. [8947.] Accounts of Hospital, How to be Kept.

The state board of control shall cause the accounts of said institution to be so kept and reported as to show the quality, quantity, cost, and vendor of every article purchased for use therein. [Cf. L. '77, p. 227, § 10; Cd. '81, § 2256; L. '90, p. 485, § 13; 1 H. C., § 1277.]

See notes to § 10899, *supra*.

See notes to § 10728, and last preceding section.

See *supra*, § 10899, uniform system of accounts.

§ 10913. [8948.] Books and Accounts to be Kept Open for Inspection.

The accounts and books of the hospital shall at all times be open to inspection of the legal visitors of the institution or any taxpayer of the state. [Cf. L. '75, p. 87, § 12; L. '77, p. 227, § 12; Cd. '81, § 2258; L. '90, p. 486, § 15; 1 H. C., § 1278.]

§ 10914. [8949.] Contingent Fund—Of What Composed and How Used.

All moneys belonging to the state, coming into the hands of the state board of control, other than that appropriated by the state, shall be kept by said board in a separate fund, to be known as the contingent fund and the same shall, by the said board, be expended at such times and in such manner as to the said board appears for the best interest

of the hospital, and for the improvement thereof, and of the grounds and buildings therewith connected. A full, strict, and itemized account of all such receipts and expenditures shall be included in the biennial report of said board. [L. '90, p. 493, § 41; 1 H. C., § 1279.]

See notes to § 10899, *supra*.

See *supra*, § 5501, requiring daily payments into state treasury of money collected by state officers.

See notes to §§ 10728, 10911.

§ 10915. [8950.] Biennial Report to Governor—Contents—Publication.

The board of control shall, on or before the first Tuesday after the convening of each regular session of the legislature, make to the governor and legislature a full report of all matters herein prescribed showing the condition of all the said institutions, the cost of conducting the same during the period covered by the report, and shall also include therein a statement of the work and expenses of the board. The board shall also incorporate in its report, suggestions respecting legislation for the benefit of the several institutions under its care, and also make estimates of the appropriations that in its opinion are necessary for the maintenance of the institutions and for buildings, betterments or other improvements. The said report shall also contain the biennial report made by the chief executive officers of the several institutions to the board or so much thereof as in its opinion might be deemed proper. Also a statement showing the dates of visitations made by the board or any member thereof to the several institutions. There shall also be published in the report a full and complete list of the officers and employees of the board and of the institutions under the control of the board, showing the annual salary paid to each officer and employee. [L. '01, p. 257, § 14.]

See notes to § 10899, *supra*.

See *supra*, §§ 10229 and 10899, annual report; also, next section.

§ 10916. [8951.] Board shall Report to Governor and Legislature.

The report [of the insane hospitals] must exhibit a particular statement of the condition of the hospital and all its concerns, an account of all contracts, expenditures, and liabilities, with a list of all officers and employees, and their salaries, and in a tabular form the value of the stock and supplies on hand. [L. '90, p. 486, § 14; 1 H. C., § 1280.]

See notes to § 10899.

Adapted, omitting portions inconsistent with the preceding section: See § 10918, *infra*.

The biennial report of the state training school must show as nearly as possible the advancement made by the inmates: See L. '90, p. 277, § 22; Bal. Code, § 2720.

§ 10917. [8952.] Political Influence—Removal from Office.

Any member or officer of the board of control, or any other officer or employee of the institutions under the control of the board, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be

removed from his office or position by the proper authorities. [L. '01, p. 257, § 15.]

See notes to § 10899.

§ 10918. [8953.] Scope of Act.

Existing laws relating to the institutions referred to in this act, which are not inconsistent with the provisions of this act, shall remain in force, and all acts or parts of acts in conflict or inconsistent with this act are hereby repealed. [L. '01, p. 258, § 16.]

"Act": See note to § 10899, *supra*.

§ 10919. [8954.] Words Defined.

The term "public institutions" when used in this act shall be construed to refer to all the institutions enumerated in this act excepting the state capitol building, and excepting also the state's educational institutions. Where the word "institutions" appears it may be construed to refer to all of the institutions mentioned in this act. [L. '07, p. 384, § 10.]

"Act": See note to § 10899, *supra*.

§ 10920. [8955.] Supervision of Board Over Transportation of Convicts, Insane, etc.

The state board of control shall have charge and supervision of the transportation of convicts to the state penitentiary, of insane persons to the hospitals for the insane, and of incorrigibles to the state training school, and are hereby invested with authority to employ necessary persons for such purpose. All sums of money appropriated for the transportation of the persons hereinbefore mentioned shall be expended under the direction of the state board of control. And the state auditor shall draw warrants upon vouchers approved by the state board of control. [L. '05, p. 235, § 1.]

Cost of transportation, see *supra*, § 10238.

§ 10921. [8956.] Power of Board to Make Rules.

The state board of control is hereby authorized to make and promulgate rules and regulations to carry into effect the provisions of section 10920. [L. '05, p. 235, § 3.]

See notes to § 10899.

For former laws see L. '86, p. 146, § 2; L. '90, p. 488, § 22; 1 H. C., § 1267; 2 Bal. Code, § 2680; L. '88, pp. 54, 55; 1 H. C., §§ 1176—1180; Bal. Code, §§ 2767—2771.

§ 10922. State Board to Perform Duties of Public Property Commissioners.

All powers and duties now vested in or required to be performed by the board of "Public Property Commissioners" are hereby vested in and required to be performed by the state board of control, and the board of "Public Property Commissioners" is hereby abolished. [L. '19, p. 292, § 1.]

See notes to § 10899.

§ 10923. [8965.*] Sale of Property by Board of Control.

The state board of control shall have power to sell and convey any personal property belonging to the state, when authorized in writing by the office or department possessing such property, and by and with the advice and consent of the governor, in writing, whenever it shall appear to said board that the state has no further use for such property and that it is for the best interests of the state to sell and dispose of the same. [L. '19, p. 292, § 2; L. '93, p. 51, § 2.]

See notes to § 10899.

§ 10924. Mode of Disposal.

All such property may be sold for cash or exchanged for other personal property of equal value, such sales or exchanges to be made at public auction or private sale, with or without notice, in the discretion of the board. [L. '19, p. 292, § 3.]

§ 10925. Monthly Reports.

Said board shall, on or before the fifteenth day of each month, file with the state auditor a report of its transactions during the preceding month, which report shall contain a statement of all articles sold or exchanged, the amount of money received from each cash sale and the value placed upon each article conveyed or received in any exchange of property. [L. '19, p. 292, § 4.]

§ 10926. [8967.*] Disposition of Moneys Realized.

All money realized from the sale of any such personal property shall be paid over to the state treasurer, who shall give to the board his receipt therefor, and the money so received shall go into the fund from which the property sold was purchased: Provided, however, that if such fund be not in existence at the time of sale the money shall be credited to the general fund of the state. [L. '19, p. 293, § 5; L. '93, p. 51, § 4.]

CHAPTER III.**BUDGET SYSTEM FOR STATE OFFICERS.****§ 10927. [5028-1.] Filing Itemized Estimates.**

On or before the fifteenth day of October of every even-numbered year the several departments, institutions, commissions and officers of the state shall report to the state board of finance on forms prescribed and according to the classification adopted by the state auditor through the bureau of inspection and supervision of public offices, an estimate in itemized form, stating the amount of money required for the conduct of such department, institution, commission or office for the biennial period beginning on the first day of April thereafter. [L. '15, p. 350, § 1.]

§ 10928. [5028-2.] Compilation of State Budget.

The state auditor, through the bureau of inspection and supervision of public offices, shall assemble said statements in proper form and show

opposite each request the amount of appropriation made for the current biennium and the amount expended from each to and including September 30th, immediately preceding, also a statement showing the actual revenues of the state for the twenty-four months ending September 30th, and the estimated receipts from all sources for the next fiscal biennium. This statement shall be submitted to the board of finance, which shall make such recommendations as it may deem proper opposite the requests of the several departments, institutions, boards and commissions. This consolidated statement shall be known as the State Budget. [L. '15, p. 350, § 2.]

§ 10929. [5028-3.] Information to Board of Finance.

The departments, institutions, commissions and officers of the state, upon request, shall forthwith furnish to the state board of finance, any information desired in relation to the affairs of their respective departments, institutions, commissions or offices. [L. '15, p. 351, § 3.]

See *supra*, § 10763, duties of board devolve upon state finance committee.

See *supra*, § 10893, state board of finance abolished.

§ 10930. [5028-4.] Submission of Budget to Legislature.

Upon the convening of each regular session of the legislature, the state board of finance shall submit to the legislature said state budget, and shall cause such budget to be printed and mailed to each member of the legislature at least fifteen days before the convening thereof. [L. '15, p. 351, § 4.]

See notes to § 10929.

§ 10931. [5028-5.] Investigation of Offices and Departments.

Said board may make such investigation of the affairs of any department, institution, commission or office as it may deem proper; may visit and inspect any department, institution, commission or office; administer oaths; examine such persons as it may deem necessary and compel the production of books, papers and records of such department, institution, commission or office pertaining to its expenditures. Any necessary expense incurred in carrying out the provisions of this act shall be paid out of the appropriation made by the legislature for the executive department. [L. '15, p. 351, § 5.]

See notes to § 10929.

§ 10932. Forfeiture for Delay.

Every officer, or directing head of any department or institution, or member of a commission, board or bureau, or employee, of the state, who shall fail to file the statement provided in section 10927, on the form and in the manner and at the time provided in said section 10927, shall forfeit ten dollars per day for each day's delay, and the state auditor is hereby directed to deduct and withhold said forfeit from the salary of those so offending. [L. '21, p. 140, § 1.]

CHAPTER IV.

STATE BUREAU OF STATISTICS.

§ 10933. [8957.] Commissioner—Creation of Bureau.

The secretary of this state shall be ex officio commissioner of statistics, and is hereby authorized and directed to establish within his office, and under his immediate supervision, a bureau to be known as the bureau of statistics, agriculture and immigration. [L. '95, p. 167, § 1.]

Cited in 58 Wash. 652.

§ 10934. [8958.] Duties.

The duties of the commissioner shall be to collect, assort, systematize and present in biennial reports to the legislature, statistical details relating to all departments of labor within the state, such as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the probable chances of all being employed, the operation of labor saving machinery in relation to hand labor, etc. Said statistics shall be classified as follows:

1. Of agriculture.
2. Of immigration.
3. Of mechanical and manufacturing industries.
4. Of mining.
5. Of transportation on land and water.
6. Of clerical and all other skilled and unskilled labor not enumerated above.
7. The amount of cash capital invested in lands, buildings, machinery, materials and means of production generally.
8. Of the number, age, sex and condition of persons employed; the nature of their employment; the extent to which the apprenticeship system prevails in various skilled industries; the number of hours of labor per day; the average length of time employed per annum, and the average annual wages received by each class of workers in each of the industries and employments enumerated.
9. Of the number and condition of the unemployed, their age, sex and nationality, together with causes of their idleness.
10. The sanitary conditions of lands, workshops, dwellings; the number and size of rooms occupied by working classes; the cost of rent, fuel, light, food, clothing and water in each locality of the state.
11. Of the number and condition of the non-Caucasian elements of the state; their social and sanitary habits; the number employed and the nature of their employment; the average wages per day of each employment, and the gross amount yearly; to what extent their employment comes in competition with the white industrial classes of the state.
12. Of the number, condition and nature of employment of the inmates of the state penitentiary, county jails and reformatory institutions, and to what extent their employment affects labor of mechanics, artisans and laborers outside of these institutions.
13. Of all such other information in relation to labor as the commissioner may deem essential to further the object sought to be obtained

by this statute, together with such operations [observations] on the condition of labor and the probable future of the same as he may deem good and salutary to insert in his biennial reports. [L. '95, p. 167, § 2.]

L. '97, pp. 34—39; Bal. Code, §§ 3296—3304, creating a bureau of labor, was repealed by L. '01, p. 35, § 10.

§ 10935. [8959.] Certain Officers to Supply Data—Distribution of Reports.

It shall be the duty of all state officers and the assessors of the various counties of the state to furnish, upon the written request of the commissioner, all the information in their power necessary to assist in carrying out the objects of this act; and all printing required by the bureau in the discharge of its duty shall be performed by the state printer at public expense, and at least three thousand copies of the printed biennial report shall be furnished the commissioner for free distribution to the public. [L. '95, p. 168, § 3.]

§ 10936. [8960.] Preparation of Report—Duties of Bureau.

The commissioner of statistics is hereby directed to prepare for immediate publication, from the reports of the county assessors, chambers of commerce, boards of trade and other authentic sources, a comprehensive report, setting forth the geography, topography, climate, natural and artificial resources of Washington, its inland waters and adjacent seas, a knowledge of which would tend to invite industrious, enterprising, intelligent people to remove hither. It shall be the duty at all times of the bureau hereby established to promptly answer all proper inquiries relative to the state of Washington received by mail or otherwise from intending immigrants. [L. '95, p. 168, § 4.]

§ 10937. [8961.] Power to Obtain Statistics.

The commissioner shall have the power to send for persons and papers whenever in his opinion it is necessary, and he may examine witnesses under oath, being hereby qualified to administer the same in the performance of his duty, and the testimony so taken must be filed and preserved in the office of said commissioner. He shall have free access to all places and works of labor, and any principal, owner, operator, manager or lessee of any mine, factory, workshop, warehouse, manufacturing or mercantile establishment, or any agent or employee of any such principal, owner, operator, manager or lessee, who shall refuse to said commissioner or his duly authorized representative admission therein, or who shall, when requested by him, willfully neglect or refuse to furnish him any statistics or information pertaining to his lawful duties which may be in the possession or under the control of said principal, owner, operator, lessee, manager or agent thereof, shall be punished by a fine of not less than fifty nor more than two hundred dollars. [L. '95, p. 169, § 5.]

§ 10938. [8962.] Information Confidential.

No use shall be made in the report of the bureau of the names of individuals, firms or corporations supplying the information called for

by this act, such information being deemed confidential and not for the purpose of disclosing any person's affairs; and the agent or employee of said bureau violating this provision shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not to exceed six months. [L.'95, p. 169, § 6.]

§ 10939. [8963.] Deputy Commissioner—Salary—Immigration Agent.

The commissioner shall appoint a deputy commissioner, who shall act in his absence, and the deputy shall receive the sum of twelve hundred dollars per annum to be paid by the state treasurer in the same manner as other state officers are paid; the sum allowed for deputy and other incidental expenses of the bureau shall not exceed the sum of three thousand dollars any one year. The commissioner shall have the authority to employ one person to act as immigration agent, which agent shall reside in such city as said commissioner may designate, and he shall be provided with such literature and incidental accessories as in his judgment may be necessary. [L. '95, p. 169, § 7.]

Cited in 58 Wash. 652.

CHAPTER V.

STATE BOARD OF PARK COMMISSIONERS AND STATE PARK COMMITTEE.

§ 10940. [8967-2.] Duties of State Board.

Said state board of park commissioners shall have authority to receive and accept donations of lands for state park purposes and shall have the management and control of all lands donated or acquired for state park purposes, and may from time to time recommend to the legislature the purchase or condemnation of lands for state purposes. [L. '13, p. 346, § 2.]

See supra, § 10768, duties devolve upon state parks committee.

See supra, § 10893, state park commissioners abolished.

§ 10941. Appointment of Secretary.

The state parks committee shall have the power to appoint and employ an executive secretary who shall have such powers and perform such duties as may be prescribed by the committee. [L. '21, p. 558, § 1.]

§ 10942. Powers of Committee.

The state parks committee shall have power:

(1) To have the care, charge, control and supervision of all parks and parkways heretofore or hereafter acquired or set aside by the state for park or parkway purposes.

(2) To plant trees along public highways in the nonforested or other area of the state, and to care for the same.

(3) To adopt, promulgate, issue and enforce rules and regulations pertaining to the use, care and administration of state parks and parkways. Every such rule and regulation shall become effective ten days after its adoption. The committee shall cause a copy of the rules and regulations to be kept posted in a conspicuous place in every state park to

which the same are applicable, but failure to post or keep any rule or regulation posted shall be no defense to any prosecution for the violation thereof.

(4) To permit the use of state parks and parkways by campers and the public generally under such rules and regulations as shall be prescribed as aforesaid.

(4½) To clear, drain, grade, seed and otherwise improve and or beautify any parks and parkways, and to erect structures, buildings, fireplaces, comfort stations and build and maintain paths, trails and roadways through and or on parks and parkways.

(5) To grant concessions in state parks and parkways, upon such rentals, fees or percentage of income or profits and for such terms, in no event longer than five years, and upon such conditions as shall be approved by the committee. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway, but the committee may in its discretion itself impose fees upon campers upon state parks and parkways. All fees received by the committee shall be deposited in the state park and parkway fund.

(6) To employ such assistance as it may deem necessary.

(7) To select and to purchase, lease or in any manner acquire for and in the name of the state of Washington such tracts of land, including shore and tide lands, for parks or parkway purposes as it shall deem proper, subject to the following provisions: (a) No tract, except tracts acquired by donation or bequest, and timbered tracts which abut upon a public highway, actually constructed or located or projected shall be acquired unless the acquisition thereof be specifically authorized by the legislature. (b) If the committee cannot acquire any tract which it is authorized to acquire, at a price it deems reasonable, then the committee is hereby vested with power to obtain title thereto, or any part thereof, by condemnation. Such condemnation shall be conducted by the attorney general and the proceedings therefor, in so far as practicable, shall be any which now is or may hereafter be authorized for the condemnation of rights of way for state highways.

(8) To co-operate or join with the United States, any county or counties, city or cities of this state, in any manner pertaining to the acquisition for park or parkway purposes of any area within this state not within the city limits of any city, and in the care, control or supervision of any park or parkway now or hereafter acquired which shall be so situated, and, when deemed advisable by the committee, to enter into any contract in writing with any such public organization or organizations, its or their officer or officers or board or boards, to that end. All parks or parkways, to the acquisition or improvement of which the state shall have contributed or in whose care, control or supervision the state shall participate pursuant to the provisions of this section, shall in so far as practicable be governed by the provisions of this act, including the penal provisions thereof.

(9) To investigate and report to the governor on or before the first day of January next preceding the regular session of the legislature regarding any proposed park or parkway, and in such report to make

recommendations respecting other regions in the state of Washington desirable for state park or parkway purposes, either on account of their historical interest, their natural beauty or otherwise. [L. '21, p. 558, § 2.]

§ 10943. Trust Moneys.

The state parks committee shall also have the power subject to approval of the legislature to receive in trust any money donated or bequeathed to it, and to carry out the terms, if any, of such donation or bequest, or, in the absence of such terms, to expend the same as it may deem advisable for park or parkway purposes. Money so received shall be deposited in the state treasury. [L. '21, p. 560, § 3.]

§ 10944. Withdrawal of Granted Lands from Sale.

Whereas the value of land with standing timber is increasing from year to year and will continue to increase, and no loss will be caused to the common school fund or other fund into which the proceeds of the sale of any land held by the state would be paid by postponing the sale of such lands, therefore, the commissioner of public lands may, upon his own motion, and shall, when directed so to do by the state parks committee, withdraw from sale any land held by the state abutting on any public highway and certify to the committee that such lands are withheld from sale pursuant to the terms of this act. Such lands withheld as aforesaid shall not be sold until directed by the legislature, and shall in the meantime be under the care, charge, control and supervision of the committee. [L. '21, p. 560, § 4.]

§ 10945. Withdrawal of Lands not Acquired from United States.

The commissioner of public lands may, upon his own motion, and shall, when directed so to do by the state parks committee, withdraw from sale any land held by the state and not acquired directly from the United States with reservations as to the manner of sale thereof and the purposes for which the same may be sold, and certify to said committee that such lands are withheld from sale pursuant to the terms of this act. All such lands shall be under the care, charge, control and supervision of the state parks committee, and any such lands may, after appraisal in such manner as the committee may direct, be exchanged for land of equal value abutting upon a public highway, and to this end the chairman and secretary of the committee are hereby authorized to execute deeds of conveyance in the name of the state of Washington. [L. '21, p. 561, § 5.]

§ 10946. Dedication of Public Parks, etc.

All state parks and parkways, subject to the provisions of this act, shall be and hereby are set apart and dedicated as public parks and parkways for the benefit and enjoyment of all of the people of this state. [L. '21, p. 561, § 6.]

§ 10947. Police Powers of Committee and Employees.

The members of the state parks committee and such of its employees as the committee shall designate shall be vested with police powers to enforce the laws of this state. [L. '21, p. 561, § 7.]

§ 10948. Violations and Penalty.

Every person who shall—

(1) Cut, break, injure, destroy, take or remove any tree, shrub, timber, plant or natural object in any park or parkway;

(2) Kill, cause to be killed, or pursue with intent to kill, any bird or animal in any park or parkway;

(3) Take any fish from the waters of any park or parkway, except in conformity with such general rules and regulations as state parks committee may prescribe;

(4) Willfully mutilate, injure, deface, or destroy any guidepost, notice, tablet, fence, inclosure or work for the protection or ornamentation of any park or parkway;

(5) Light any fire upon any park or parkway, except in such places as the state parks committee shall have authorized, or willfully or carelessly permit any fire which he has lighted or caused to be lighted or which shall be under his charge, to spread or extend to or burn any of the shrubbery, trees, timber, ornaments or improvements upon any park or parkway, or leave any camp-fire which he shall have lighted or which shall have been left in his charge, unattended by a competent person, without extinguishing the same;

(6) Place within any park or parkway or affix to any object therein contained, without a written license from the state parks committee, any word, character or device designed to advertise any business, profession, article, thing, exhibition, matter or event;

(7) Violate any rule or regulation adopted, promulgated, or issued by the state parks committee pursuant to the provisions of this act;

Shall be guilty of a misdemeanor. [L. '21, p. 562, § 8.]

§ 10949. Records of State Board of Park Commissioners.

The state parks committee shall succeed to all the files and records of the heretofore existing state board of park commissioners. [L. '21, p. 563, § 9.]

§ 10950. Scope of Act.

Nothing herein contained shall be construed to repeal, by implication or otherwise, any existing criminal statute of this state. [L. '21, p. 563, § 10.]

§ 10951. Partial Validity.

In case any section or portion of this act shall be held to be unconstitutional or invalid, it shall not affect the remainder of the act. [L. '21, p. 563, § 11.]

CHAPTER VI.

SUPERINTENDENT OF CAPITOL BUILDINGS AND GROUNDS.

§ 10952. Control of Capitol Building and Grounds.

It shall be the duty of said superintendent of capitol buildings and grounds to supervise and direct the proper care, heating, lighting and repairs of all capitol buildings now in use or hereafter erected and occupied by state officers at the state capitol, and keep in charge the property of the senate and house chambers during the recess of the legislative sessions, and he shall have the power to appoint assistants and employees required for the management of buildings placed in his charge and may at his pleasure discharge any person so employed. [L. '19, p. 104, § 2.]

See supra, § 10794, duties devolve upon director of business control.

See supra, § 10893, superintendent of capitol buildings abolished.

CHAPTER VII.

PUBLIC ARCHIVES COMMISSION.

§ 10953. [8968.] Of Whom Composed—Duties.

There is hereby created a public archives commission which shall consist of the governor of the state, the secretary of the state and the state auditor who shall be the official custodians of all public documents, records and archives of the state, and in general all such material as shall come into its possession in accordance with the terms of this chapter. [L. '09, p. 57, § 1.]

See supra, § 10767, duties devolve upon state archives committee.

See supra, § 10893, public archives commission abolished.

§ 10954. [8969.] "Archives" Defined.

The term archives as used in this chapter shall be construed to mean manuscripts, manuscript books, records, printed books, papers, maps or drawings, or other papers of original record of any office, department, board or commission, constituting the state government, and which are not of current use, but whose chief use is that of preservation and reference, and which is required by law to be preserved, filed or recorded in any office of the state, or of any county or municipality, or of any officer or employee of the state or of any county or municipality. [L. '09, p. 57, § 2.]

§ 10955. [8970.] Authority and Duties of Commission.

The public archives commission shall have full and complete control of the official archives of the state, and it shall be their duty to arrange for the assortment, classification, labeling, filing, indexing, and cataloguing of the entire body of the archives committed to their custody. [L. '09, p. 58, § 3.]

See notes to § 10953.

§ 10956. [8971.] Rules and Regulations.

They may adopt such rules and regulations regarding the care and custody of the official archives as they may deem best, and may authorize

the making of copies of the same, which copies may be given under the seal of the commission, for which purpose the commission may adopt an appropriate seal. [L. '09, p. 58, § 4.]

See notes to § 10953.

§ 10957. [8972.] Records Surrendered to Commission for Preservation.

Any state official, county or other official is hereby authorized and empowered in his discretion, to turn over to the public archives commission for permanent preservation therewith any official archives not in current use in his office. When so surrendered copies therefrom shall be made and certified by the archivist upon the application of any person interested, which certification shall have all the force and effect as if made by the officer originally in charge of them and for which the same fees shall be charged, to be collected in advance: Provided, that in turning over the archives of his office the officer in charge thereof or his successor in office thereby loses none of his rights of access to them whenever necessary and for which no fees shall be charged. [L. '09, p. 58, § 5.]

§ 10958. [8973.] State Librarian to Serve as Archivist.

The state librarian shall serve, without pay, as archivist, and shall under the direction of the public archives commission have control and direction of the work and operations of the department; he shall preserve its collections and care for the official archives that may come into the custody of the commission. For this preservation the commission shall furnish suitable rooms, cases and vaults. [L. '09, p. 58, § 6.]

See notes to § 10953.

§ 10959. [8974.] Biennial Report to Legislature.

It shall be the duty of the commission to report biennially to the legislature the condition of the archives under their care, and to make such recommendations as will result in the records of this state being permanently preserved for historic and reference purposes. [L. '09, p. 59, § 7.]

See notes to § 10953.

CHAPTER VIII.

STATE HUMANE BUREAU.

§ 10960. [8974-1.] Humane Bureau—Members.

There is hereby created a bureau, which shall be known as the State Humane Bureau, which bureau shall consist of the governor, the superintendent of public instruction, the attorney general, and two members to be appointed by the governor. [L. '13, p. 312, § 1.]

§ 10961. [8974-2.] Duties of Bureau.

It shall be the duty of said bureau to promote and aid in the enforcement of the laws for the prevention of wrongs to children, idiots, imbeciles and insane, feeble-minded and defective persons, and persons who by reason of age or for any other reason are helpless or unable to

care for themselves; and to promote and aid in the enforcement of the laws for the prevention of cruelty to animals; to promote the organization of county and other local societies to aid such bureau in carrying out the provisions of this act, and to appoint local and state agents for that purpose; to aid such local societies and agents in carrying out the provisions of this act; and to promote the growth of education and sentiment favorable to the enforcement of the laws hereinabove enumerated. [L. '13, p. 312, § 2.]

§ 10962. [8974-3.] Annual Meeting.

The said bureau shall hold an annual meeting on the second Monday in November in each year, at the state capitol, for the election of officers and for the transaction of such other business as will aid in carrying out the provisions of this act. [L. '13, p. 312, § 3.]

§ 10963. [8974-4.] Reports.

Said bureau shall make and file, in the office of the secretary of state, on or before the first Monday in January of each year, a report of its proceedings for the preceding year, with statistics showing the accomplishments of the bureau and its agents, and the county and local societies organized under the advice and supervision of the bureau, together with such recommendation as the bureau may deem advisable for the further protection of incompetents, children and animals; which report shall be edited and published as are the reports of other state officers. [L. '13, p. 312, § 4.]

§ 10964. [8974-5.] Officers of Bureau.

The governor shall be president of said bureau, and said bureau may elect a secretary, prescribe his duties, not inconsistent with the provisions of this act, and fix his compensation; and may appoint and employ such other subordinate agents as it may deem advisable, define their duties and fix their compensation. [L. '13, p. 313, § 5.]

State Bureau of Statistics. See "State and State Boards," § 10933.

State Capitol Commission. See "Lands of the State," § 7898.

State Chemist. See "Agriculture," § 2829.

State College. See "Education," § 4567.

State Committees. See "State Boards and Appointive Officers" (Administrative Code).

State Depositories. See "Finance," § 5548.

State Departments. See "State Boards and Appointive Officers."

State Educational Funds. See "Finance," § 5518.

State Fairs. See "Agriculture," § 2736.

State Fire-warden and Forester. See "Forests and Forest Fires."

STATE CHEMIST—STATE LUMBER AND SHINGLE WEIGHERS.

State Fiscal Agency. See "Finance," §§ 5484, 5488.

State Fish Commissioners. See "Fish and Oysters."

State Forester. See "Forests and Forest Fires," § 5781.

State Funds. See "Finance," § 5501.

State Game-warden. See "Game," § 5854.

State Geologist. See "Geological Survey," § 5993.

State Health Commissioner. See "Health," § 6004.

State Highway Commissioner. See "Highways," § 6759.

State Historical Society. See "Libraries, Museums and Historical Society," § 8259.

State Institution for Feeble-minded. See "Education," § 4655.

State Institutions. Control of, see "State and State Boards," § 10899.

State Insurance Commissioner. See "Insurance," § 7034.

State Land Commissioner. See "Lands of the State," § 7815.

State Lands. See "Lands of the State," § 7797.

State Libraries. See "Libraries, Museums and Historical Society,"

State Log-scaler. See "Logs and Logging," § 8363.

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STATE OFFICERS.

TITLE LXXVI.

STATE OFFICERS.

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CHAPTER I.

SALARIES, OATHS AND TERMS OF OFFICE.

§ 10965. [8975.] Salaries to be Paid Monthly.

The salaries of all state officers shall hereafter be paid monthly on the last day of each month, as provided by law. [L. '90, p. 329, § 1; L. '91, p. 267, § 1; 1 H. C., § 3044.]

Compare § 2962, 1 H. C.

Cited in 98 Wash. 256.

Who are State Officers: See Remington's Digest, States, § 7; *State v. Womack*, 4 Wash. 19, 29 Pac. 939; *State*

ex rel. Dyer v. Twitchell, 4 Wash. 715, 31 Pac. 19; *State ex rel. Stearns v. Smith*, 6 Wash. 496, 33 Pac. 974.

§ 10966. [8976.] Compensation for Unofficial Services Authorized, When.

The directors, trustees, and commissioners of state institutions in this state, serving as such without any compensation, shall not be precluded by reason of holding such offices from receiving compensation for services not official rendered without being procured or brought about by use of such official position, or by reason thereof, but such officers shall be allowed to receive such reasonable compensation for services not official or connected with their respective offices as they would otherwise be allowed were they not such officers. [L. '91, p. 207, § 1; 1 H. C., § 3045.]

Compensation of Officers and Fees: See Remington's Digest, States, §§ 9—11.

State ex rel. Bagley v. Clausen, 111 Wash. 254, 190 Pac. 329.

§ 9. Form and Amount of Compensation, in General: *State ex rel. Stratton v. Maynard*, 35 Wash. 168, 76 Pac. 937.

Constitutional prohibition against increase of compensation during term as applicable where new duties are imposed on officer after taking office. 18 *Ann. Cas.* 403; *Ann. Cas.* 1918E, 1062; *L. R. A.* 1918E, 761.

§ 10. — Compensation of Particular Officers, Agents or Employees: *Strobach v. State*, 17 Wash. 123, 49 Pac. 225; *Young v. Millett*, 19 Wash. 486, 53 Pac. 823; *State ex rel. Helander v. Clausen*, 98 Wash. 253, 167 Pac. 947.

Constitutional prohibition against change of salary during term as affecting fees. 23 *L. R. A.* 609.

§ 11. — Increase of Compensation: *State ex rel. Eshelman v. Cheetham*, 21 Wash. 437, 58 Pac. 771; *State ex rel. Jones v. Clausen*, 78 Wash. 103, 138 Pac. 653.

Right to recover compensation attached to each, where two compatible offices are held by same person. 2 *Ann. Cas.* 390.

See, also, *State ex rel. Younger v. Clausen*, 111 Wash. 241, 190 Pac. 324;

Right to hold two offices at same time. 2 *Ann. Cas.* 380; 10 *Ann. Cas.* 967; *Ann. Cas.* 1915A, 525; *L. R. A.* 1917A, 216, 231.

§ 10967. [8977.] Salaries of Superior Judges—How Paid by Counties.

The county auditor of each county shall draw his warrant on the treasurer of such county on the first Monday of each month for the amount of salary due for the previous month from such county to the judge of the superior court thereof, and said warrant shall be paid by said treasurer out of the salary fund of said county. [L. '90, p. 329, § 2; 1 H. C., § 2963; L. '93, p. 45, § 1.]

See *infra*, § 11053, salary.

Salary: See Remington's Digest, Judges, § 5-2; *Salary of Superior Court Judges*, *In re*, 82 Wash. 623, 144 Pac. 929.

§ 10968. [8978.] How Apportioned Between Counties.

Where there is only one judge of the superior court for two or more counties, the auditors thereof, acting together, shall apportion among or between such counties, according to the assessed valuation of their taxable property, the amount of such judge's salary that each county shall pay. [L. '90, p. 329, § 3; 1 H. C., § 2964.]

§ 10369. [8979.] Clerk of Supreme Court—Salary of.

The clerk of the supreme court shall receive an annual salary of two thousand dollars, the same to be paid out of the funds appropriated for paying the expenses of the said court. [L. '90, p. 330, § 1; 1 H. C., § 2966.]

§ 10970. [8980.] Payment of Salary.

He shall draw his salary from the time of entering upon the duties of his office, and at the end of each month the state auditor shall draw a warrant on the state treasurer in favor of said clerk of the supreme court for the amount of his salary. [L. '90, p. 330, § 2; 1 H. C., § 2967.]

Modified to conform to § 10965, *supra*.

§ 10971. [8981.] Bailiffs of Supreme Court—Salaries of.

Bailiffs of the supreme court are hereby entitled to and shall be paid three dollars per diem. [L. '90, p. 331, § 1; 1 H. C., § 2968.]

§ 10972. [8982.] Warrant for Salary of Issued, When.

The state auditor shall issue his warrant for salary of supreme court bailiffs upon receipt of certificate of time served, signed by any one or more of the supreme court judges, and attested by the clerk of the supreme court. [L. '90, p. 331, § 2; 1 H. C., § 2969.]

See *infra*, § 11052, appointment authorized.

§ 10973. [8983.*] Payment of Bailiffs in Superior Courts.

Bailiffs of the several superior courts in counties having a population of more than one hundred thousand in this state, appointed by the respective judges thereof, shall be paid for their services one hundred dollars (\$100) per month by the county in which the court is held, with no allowance for overtime. Bailiffs of the superior courts in the other counties of this state, appointed by the respective judges thereof, shall be paid for their services not to exceed three dollars (\$3) per day by the county in which the court is held. [L. '17, p. 337, § 1; L. '91, p. 17, § 1; 1 H. C., § 2970.]

See note to last section.

§ 10974. Bailiffs in Counties of Over One Hundred and Twenty-five Thousand Population.

Bailiffs of the several superior courts, appointed by the respective judges thereof, in counties of this state having a population of more than one hundred twenty-five thousand, shall be paid for their services

one hundred and twenty-five dollars per month by the county in which the court is held. [L. '21, p. 91, § 1; L. '19, p. 391, § 1.]

§ 10975. [8984.] Superior Judge to Certify Amount Due.

From time to time, the superior judge of the county shall certify the amount due any such bailiff, and order the payment thereof; and thereupon the county auditor shall issue to such bailiff a warrant on the county treasurer, payable out of the general fund, for the amount so certified. [L. '91, p. 17, § 2; 1 H. C., § 2971.]

§ 10976. [8985.] Salaries—Payment.

The annual salaries of the following named officers are hereby fixed as follows: Governor, six thousand dollars; lieutenant-governor, twelve hundred dollars; secretary of state, three thousand dollars; treasurer, three thousand dollars; auditor, three thousand dollars; attorney general, three thousand dollars; superintendent of public instruction, three thousand dollars; and commissioner of public lands, three thousand dollars. The salaries herein provided for shall be paid at the times and in the manner now provided by law. [L. '07, p. 174, §§ 1, 2. Cf. L. '90, p. 629, § 5; L. '90, p. 633, § 11; L. '90, p. 638, § 9; L. '90, p. 644, § 9.]

§ 10977. Public Land Commissioner.

The commissioner of public lands shall receive an annual salary of five thousand dollars (\$5,000). [L. '19, p. 294, § 1.]

§ 10978. Insurance Commissioner.

The state insurance commissioner shall receive an annual salary of five thousand dollars (\$5,000). [L. '19, p. 294, § 2.]

§ 10979. Lieutenant-governor Acting as Governor.

Whenever by reason of the absence from the state or the disability of the governor, the lieutenant-governor shall be called upon to, and shall, temporarily perform the duties of the office of governor, he shall be paid upon his personal voucher therefor the sum of ten dollars (\$10) per day for expenses. [L. '19, p. 288, § 1.]

§ 10980. [8986.] Terms of State Officers—Commencement and Duration of.

The governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and commissioner of public lands, who shall be elected at the next general election for the state of Washington, shall commence on the Wednesday after the second Monday in January after their election, and hold their office for the term of four years, and until their successors are elected and qualified; and thereafter the term of office of said officers shall commence upon the Wednesday after the second Monday of January following their election. [L. '91, p. 164, § 1; 1 H. C., § 150.]

Term of Office, Vacancies, and Holding Over: See Remington's Digest, States, § 7-1; State ex rel. Fish v. Howell, 59 Wash. 492, 110 Pac. 386, 50 L. R. A. (N. S.) 336.

§ 10981. [8987.] Oath for State Officers.

The governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands and insurance commissioner of the state of Washington, shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation in substance as follows: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the state of Washington, and that I will faithfully discharge the duties of the office of (name of office) to the best of my ability. Which oath or affirmation shall be administered by one of the justices of the supreme court at the capitol. A certificate whereof shall be affixed thereto by the person administering the oath, and the oath or affirmation so certified shall be filed in the office of the secretary of state before the officer shall be qualified to discharge any official duties: Provided, however, that the oath of the secretary of state shall be filed in the office of the state auditor. [L. '09, p. 70, § 1.]

CHAPTER II.**GOVERNOR.****§ 10982. [8988.] General Powers and Duties.**

In addition to those prescribed by the Constitution, the governor has the power and may perform the duties prescribed in this and the following sections:—

1. To supervise the conduct of all executive and ministerial officers.
2. To see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session.
3. To make the appointments and supply the vacancies mentioned in this chapter.
4. He is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States.
5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state, and report the same to him, or to any grand jury designated by him, or to the legislature when next in session.
6. He may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to him, or to any grand jury designated by him, or to the legislature when next in session.
7. He may require the attorney general to aid any prosecuting attorney in the discharge of his duties.
8. He may offer rewards, not exceeding one thousand dollars in each case, payable out of the state treasury, for the apprehension of any

person convicted of a felony who has escaped from the state prison, or of any person who has committed or is charged with the commission of a felony.

9. To perform such duties respecting fugitives from justice as are prescribed by the Penal Code.

10. To issue and transmit election proclamations as prescribed by law.

11. He may require any officer or board to make, upon demand, special reports to him, in writing.

12. He may control or suppress riots or unlawful strikes, or any unlawful assembly of ten or more persons, when by such riot, unlawful strike, or unlawful assembly any persons are attempting to commit a felony, or inciting others to commit such crime, or any person or persons are in imminent danger of losing either life or property. But before taking any such action, the governor shall first notify and request the local authorities to suppress such riot, unlawful strike, or unlawful assembly, and if they fail, refuse, neglect, or are unable to do so, he shall issue his proclamation commanding such persons to disperse and refrain from taking part in or encouraging or inciting such riot, unlawful strike, or unlawful assembly, and if thereafter such imminent danger still continues, the governor shall proceed to suppress the same by calling into action all the force necessary to accomplish that purpose.

13. He has such other powers and duties as are devolved upon him by this chapter, or by any other law of this state. [L. '90, p. 627, § 1; 1 H. C., § 61.]

See Const., Art. III, Art. X, § 2.

See supra, § 2241 et seq., proceedings respecting fugitives from justice.

See supra, § 2247 et seq., rewards for fugitives.

See supra, §§ 10759—10895, duties as to appointive officers.

See supra, §§ 10976—10981, salary, term and oath of office.

Cited in 3 Wash. 396, 397; 19 Wash. 637; 28 Wash. 499; 89 Wash. 184.

Gilbert v. Dimmick, 89 Wash. 182, 154 Pac. 163.

This section is controlled by the military code prescribing the duties of the governor in regard to the militia: Chapin v. Ferry, 3 Wash. 386, 28 Pac. 754, 15 L. R. A. 116.

The governor is not authorized to employ expert assistance to investigate the books and accounts of the state penitentiary: Young v. State, 19 Wash. 634, 54 Pac. 36.

Under this section the governor may fill two out of three vacancies in the office of county commissioners: State ex rel.

Right of governor to make appointment to office where term does not begin until after expiration of term of appointing power. 18 Ann. Cas. 142.

Existence and effect of vacancy in office of governor. Ann. Cas. 1915A, 577.

How far sickness constitutes a vacancy in office authorizing performance of the duties of the office by another. 25 L. R. A. 613.

§ 10983. [8989.*] Records to be Kept.

The governor must cause to be kept the following records:

First, a register of all pardons, commutations, executive paroles, final discharges, and restorations of citizenship made by him.

Second, an account of all his disbursements of state moneys, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

Third, a register of all appointments made by him with date of commission, name of appointee and name of predecessor, if any. [L. '21, p. 98; § 1; L. '90, p. 628, § 2; 1 H. C., § 62.]

§ 10984. [8990.] When must Send Appointments to the Senate.

On or before the last five days of each biennial session of the legislature, the governor must transmit to the senate a list of all the appointments made by him, and not before communicated to the senate for confirmation. [L. '90, p. 629, § 3; 1 H. C., § 63.]

See Const., Art. III, § 13, appointments to fill vacancies.

See Const., Art. XIII, § 1, power to make appointments.

§ 10985. [8991.] Lieutenant-governor to Act as Governor, When.

In case the governor absents himself from the state, he shall, prior to such departure from the state, notify the lieutenant-governor of such proposed absence, and during such absence of the governor from the state, the lieutenant-governor shall perform all the duties of the governor. [L. '90, p. 629, § 6; 1 H. C., § 64.]

See supra, §§ 10976—10981, salary, term and oath of office.

Under Constitution, Article III, sections 2, 3 and 10, in case of the death of a governor the duties of the office devolve upon the lieutenant-governor for the balance of the term and there is no vacancy in the office of governor requiring to be filled by election; and when the lieutenant-governor assumes the duties of governor on such death, the office of lieutenant-governor does not thereby become vacant, but that officer retains the office for the term elected, intrusted, however, with the powers and duties of governor:

State ex rel. Murphy v. McBride, 29 Wash. 335, 70 Pac. 25.

Although, Article III, section 16, of the Constitution makes it the duty of the lieutenant-governor to be presiding officer of the state senate, he is relieved therefrom when the duties of governor devolve upon him by Article II, section 10, of the Constitution, which provides that when the lieutenant-governor shall act as governor the senate shall choose a temporary president for that body: State ex rel. Murphy v. McBride, 29 Wash. 335, 70 Pac. 25.

§ 10986. [8992.] Powers and Duties of Acting Governor.

Every provision in the laws of this state in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by others towards him, extends to the person performing for the time being the duties of the governor. [L. '90, p. 629, § 4; 1 H. C., § 65.]

§ 10987. [8993.] Warrant for Expense of Publishing Proclamation.

When the governor is authorized or required by law to issue a proclamation, payment for publishing the same shall be made out of the state treasury. The state auditor is hereby authorized to draw a warrant in favor of the person entitled to the same for such publication. The amount allowed any newspaper for the publication of a proclamation shall not exceed the sum of twelve dollars. [L. '81, p. 45, §§ 1—3; Cd. '81, § 2367; 1 H. C., § 2939.]

§ 10988. [8994.] Officers Subject to Removal by Governor.

The governor of the state of Washington is hereby authorized and empowered to remove from office all state officers appointed by him

not liable to impeachment for incompetency, misconduct or malfeasance in office. [L. '93, p. 247, § 1.]

Cited in 8 Wash. 416; 9 Wash. 64; 14 Wash. 329; 19 Wash. 332.

Resignation, Suspension or Removal of Officers: See Remington's Digest, States, § 8; State v. Seavey, 7 Wash. 562, 35 Pac.

389; State ex rel. McReavey v. Burke, 8 Wash. 412, 36 Pac. 281; State ex rel. Howlett v. Cheetham, 19 Wash. 330, 53 Pac. 349.

§ 10989. [8995.] Governor to File Reasons for Removal.

Whenever the governor is satisfied that any officer not liable to impeachment has been guilty of misconduct, or malfeasance in office, or is incompetent, he shall file with the secretary of state a statement showing his reasons with his order of removal, and the secretary of state shall forthwith send a certified copy of such order of removal and statement of causes by registered mail to the last known postoffice address of the officer removed. [L. '93, p. 248, § 2.]

Cited in 39 Wash. 380.

§ 10990. [8996.] Vacancy, How Filled.

At the time of making the removal from office herein provided for, the governor shall appoint some proper person to fill such office, who shall forthwith demand and receive from the officer removed the papers, records and property of the state pertaining to the office and shall perform the duties of such office and receive the compensation thereof until his successor is appointed. [L. '93, p. 248, § 3.]

CHAPTER III.

SECRETARY OF STATE.

§ 10991. [8997.] Custodian of State Records.

The secretary of state is charged with the custody:

First. Of all acts and resolutions passed by the legislature.

Second. Of the journals of the legislature.

Third. Of the seal of the state.

Fourth. Of all books, records, deeds, parchments, maps and papers required to be kept on deposit in his office pursuant to law.

Fifth. Of the enrolled copy of the Constitution.

Sixth. He shall have charge of and shall manage all other property located at the state capital belonging to the state and not exclusively under the control of some other officer; and must keep the said capitol building and other property together with all furniture and appurtenances therein or thereto in proper order and repair.

Seventh. He shall provide fuel, lights and stationery for the senate and house of representatives, state library, supreme court, supreme court library, and for all state officers having their offices or chambers at the state capital. [L. '03, p. 188, § 1. Cf. L. '90, p. 629, § 1; 1 H. C., § 67.]

See Const., Art. III, § 24, to be kept at seat of government.

Subdivisions sixth and seventh are repealed, in part at least, by §§ 10899 and 10906, supra. Part of the sixth subdivision is omitted.

See supra, § 8147, and notes, supplies how purchased.

§ 10992. [8998.] General Duties.

It is the duty of the secretary of state,—

1. To keep a register of and attest the official acts of the governor;
2. To affix the state seal, with his attestation, to commissions, pardons, and other public instruments to which the signature of the governor is required, and also in attesting and authenticating all certificates and other documents properly issued by said secretary;
3. To record in proper books all conveyances made to the state, and all articles of incorporation, letters patent, deeds, certified copies of franchises, or other papers filed in his office;
4. To receive and file all the official bonds of officers whose bonds are required to be filed with him;
5. To take and file in his office receipts for all books distributed by him;
6. To certify to the legislature, as required by the Constitution, the election returns for all officers required in said Constitution to be so certified, and to certify to the governor the name of all other persons who have received at any election the highest number of votes for any office the incumbent of which is to be commissioned by the governor;
7. To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;
8. To present to the speaker of the house of representatives, at the beginning of each regular session of the legislature, a full account of all purchases made and expenses incurred by him on account of the state;
9. To file in his office an impression of each and every seal in use by any state officer, and to furnish state officers with new seals when necessary;
10. To keep a fee-book, in which must be entered all fees received by him, of whatever nature or kind, collected or charged, with the date, name of the payor, paid or unpaid, and the nature of the services in each case, which book must be verified annually by his affidavit entered therein; which fees so collected by him shall be paid into the state treasury, from time to time, as collected: Provided, that fees heretofore collected shall also be paid into the state treasury. [L. '90, p. 630, § 2; 1 H. C., § 68.]

See Const., Art. III, § 17, records to keep.

See Const., Art. III, § 15, commissions to be sealed.

See Const., Art. XVIII, § 1, description of seal.

See Const., Art. III, § 18, keeper of.

See *supra*, §§ 10976—10981, salary, term and oath of office.

See *supra*, § 10862, certain duties devolve upon director of licenses.

Cited in 20 Wash. 80.

The duties of the secretary of state as such, under this section, are ministerial and entirely distinct from his duties as member of the state board of pardons, and he may be required by mandamus to affix the state seal to all pardons signed by the governor: *State ex rel. Rogers v. Jenkins*, 20 Wash. 78, 54 Pac. 765.

There being no provision of law requiring the secretary of state to perform, or have done, the clerical work involved in the preparation of commissions for notaries public, a writ of mandate will not issue to compel his performance of such duties: *State ex rel. Rogers v. Jenkins*, 21 Wash. 364, 58 Pac. 217.

The duties of the secretary of state are—general for action; nor would the courts not ministerial to the extent of requiring require the doing of a vain or illegal act: him to file improper articles of incorporation State ex rel. Gorman v. Nichols, 40 Wash. 437, 82 Pac. 741. tion and refer the matter to the attorney

§ 10993. [8999.] Fees for Special Services.

The secretary of state shall collect the fees herein prescribed for his official services:

(1) For a copy of any law, resolution, record or other document or paper on file in his office, fifteen cents per folio: Provided, no copy shall be furnished by the secretary of state unless under the seal of the state.

(2) For any certificate under seal of state, two dollars.

(3) For recording articles of incorporation, fifteen cents per folio.

(4) For filing and recording trademark, five dollars.

(5) For each deed or patent of land issued by the governor, if for one hundred and sixty acres of land, or less, one dollar, and for each additional one hundred and sixty acres, or fraction thereof, one dollar.

(6) For recording miscellaneous records, papers or other documents, ten cents per folio, and five dollars for filing each case. But no member of the legislature, state officer, judge of the supreme court or superior courts, shall be charged for any search relative to matters pertaining to the duties of their offices; nor must they be charged for a certified copy of any law or resolution passed by the legislature relative to their official duties: Provided, such law has not been published as a state law. All fees herein enumerated must be collected in advance. [L. '03, p. 297, § 1; L. '07, p. 94, § 1. Cf. L. '93, p. 421, § 1.]

Compare, 1 H. C., § 75.

See supra, § 3836 et seq., fees for articles of incorporation.

§ 10994. [9000.] Official Bond.

The secretary of state must execute an official bond to the state in the sum of ten thousand [dollars], conditioned upon the faithful performance of the duties of his office, and must receive no pay under the laws of the state until such bond, approved by the governor, is filed with the auditor of state. [L. '90, p. 633, § 10; 1 H. C., § 76.]

See Const., Art. III, § 17, salary of.

§ 10995. [9001.] Assistant Secretary of State.

The secretary of state may have one assistant secretary of state to be appointed by him in writing, and to continue during his pleasure. Such assistant secretary of state to have the power to perform any act or duty relating to the secretary of state's office, that the secretary of state has, and the secretary of state shall be responsible for the acts of said assistant. [L. '03, p. 105, § 1. Cf. L. '90, p. 633, § 12; 1 H. C., § 78.]

CHAPTER IV.

STATE AUDITOR.

State funds: See *supra*, §§ 5501—5547.

§ 10996. [9002.] To Keep Office at Seat of Government, Give Bond, etc.

The state auditor shall reside and keep his office at the seat of government, and before entering upon his duties shall execute and deliver to the secretary of state a bond to the state in the sum of fifty thousand dollars, to be approved by the governor, conditioned for the faithful performance of all duties required or which may be required of him by law, and take an oath of office before any person authorized to administer oaths, and file a copy thereof, together with his bond, in the office of the secretary of state. [Cf. L. '54, p. 409, § 2; L. '71, p. 96, § 1; Cd. '81, § 2566; L. '90, p. 634, § 1; 1 H. C., § 80.]

§ 10997. [9003.] Accountant and Keeper of Public Documents.

The state auditor is hereby declared to be the general accountant of the state, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the state, its revenue, debt, and fiscal affairs, and of all other papers appertaining to the state, or any department thereof, and not required by law to be placed in some other office or kept by some other person. All books, papers, letters, and transactions pertaining to the office of state auditor shall be open to the inspection of the public generally during office hours. [Cf. L. '54, § 409, § 3; L. '71, p. 97, § 4; Cd. '81, § 2567; L. '90, p. 635, § 2; 1 H. C., § 81.]

See Const., Art. III, § 20, power and duties of.

§ 10998. [9004.] Assistant State Auditor—Salary, etc.

The state auditor may appoint an assistant state auditor, who shall have power to perform any act or duty which may be performed by the state auditor as such, and in case of a vacancy in the office of state auditor, he shall perform the duties of said office till the vacancy is filled as provided by law. Such assistant shall subscribe to and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The state auditor shall be liable under his official bond for all the official acts of the assistant state auditor, and may revoke such appointment at his pleasure and may require such assistant to furnish a bond in such sum as said auditor may determine, which bond shall be made, approved and filed as other state officials' bonds, and such assistant auditor shall be primarily liable on such bond for any malfeasance or misfeasance in his office; in case action shall be brought against the state auditor for the official acts of the assistant state auditor, said state auditor shall be subrogated to the rights of the state on the bond of the assistant state auditor, and may maintain actions thereon. The salary of the assistant state auditor shall be twenty-four hundred (\$2400) dollars per year. [L. '09, Ex. Sess., p. 60, § 1.]

See *supra*, §§ 10976—10981, salary, term and oath of office of auditor.

§ 10999. [9005.] May Appoint Deputy.

The state auditor shall have authority to appoint a deputy, who, before entering upon the duties of his office, shall take and subscribe an oath faithfully to perform the duties of said office, which oath shall be indorsed on the appointment and filed in the office of the state secretary. Said appointment may be revoked at the pleasure of the state auditor. The state auditor shall be held responsible on his official bond for all official acts of his said deputy. The said deputy shall be paid a salary of twelve hundred dollars annually, payable quarterly out of the state treasury. [Cd. '81, § 2568; L. '90, p. 635, § 3; 1 H. C., § 132.]

Cited in 78 Wash. 104.

The legislature has power in a general appropriation bill to increase the salary of the state officers, fixed by the act of 1890; and the provision in the Laws of 1913, page 9, appropriating \$3,600 for the

salary of the deputy state auditor for two years, suspends this section, fixing his salary at \$1,200 per year: State ex rel. Jones v. Clausen, 78 Wash. 103, 138 Pac. 653.

§ 11000. [9006.] Reports to Legislature.

It shall be the duty of the auditor to digest, prepare, and report to the legislature at the commencement of each biennial session,—

1. A full and detailed statement of the condition of the revenues and the amount of the expenditures for the fiscal year;

2. A full and detailed statement of the public debt;

3. Estimates of revenue and the expenditures for the next succeeding year;

4. Such plans as he may deem expedient for the support of public credit, for lessening the public expenses, for using the public money to the best advantage, for promoting frugality and economy in public offices, and generally for the better management and more perfect understanding of the financial affairs of the state;

5. A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended;

6. A tabular statement, showing separately the amount of money received into the treasury from all sources in the preceding fiscal year, the amount received from each county, and the source of revenue in each county for state purposes. [L. '54, p. 409, § 4; Cd. '81, § 2569; L. '90, p. 635, § 4; 1 H. C., § 83.]

§ 11001. [9007.] Duties Enumerated.

It shall be the duty of the auditor,—

1. To audit, adjust, and settle all claims against the state, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons;

2. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law;

3. To keep a correct register, in tabular form, of all warrants issued by him, showing the number, date, amount, to whom and for what payable, with an additional column in which to enter the date on which each warrant is returned or paid;

4. To express in the body of every warrant which he may draw upon the treasury the particular fund appropriated by law out of which the same is to be paid;

5. To audit, settle, and adjust the accounts of all collectors of the revenue and other holders of public money who are required by law to pay the same into the treasury;

6. To examine and settle the accounts of all persons indebted to the state, and to certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge, and charge the treasurer therewith;

7. In his discretion, to inspect the books of any person charged with the receipt, safekeeping, and disbursement of public moneys;

8. To keep an account between the state and the state treasurer;

9. To keep an account of all debts and credits between the state and United States;

10. To direct prosecutions in the name of the state for all official delinquencies in relation to the assessment, collection, and payment of the revenue, against all persons who, by any means, become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the state;

11. To give information in writing to either house of the legislative assembly, whenever required, upon any subject relating to the financial affairs of the state, or touching any duties of his office;

12. To furnish the offices of himself and the state treasurer with all books, papers, blanks, and forms required by law for the proper discharge of the duties of their offices, and to furnish the proper forms, through the clerks of the counties, to assessors, treasurers, and sheriffs, and such clerks, in relation to the assessment and collection of public revenue;

13. To have printed and forwarded to the treasurer of each county blank state licenses;

14. To keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes;

15. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts and make payment thereof in pursuance of law;

16. In his discretion, to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it;

17. To furnish the state treasurer with a list of warrants drawn upon the treasurer;

18. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office;

19. To make his official report biennially, on or before the thirty-first of December, in each year, preceding the meeting of the legislature;

20. To perform all such other duties as may be required by law. [Cf. L. '54, p. 410, § 5; Cd. '81, § 2570; L. '90, p. 636, § 5; 1 H. C., § 84.]

See supra, § 5512 et seq., provisions relating to disbursement of public money.

See supra, § 5514, unlawful for auditor to issue warrant unless upon vouchers, etc.

See supra, § 10805, duties devolving upon director of efficiency.

See supra, §§ 10812, 10813, duties devolving upon director of taxation.

See supra, § 10862, duties devolving upon director of licenses.

Cited in 25 Wash. 290; 44 Wash. 441, 444.

Under this section the auditor exercises no judgment and discretion, but only acts in a ministerial capacity in auditing the claim of an expert authorized by law to

be employed by the state railway commission, although the commission is not authorized to "audit" the claim: State ex rel. Gillette v. Clausen, 44 Wash. 437, 87 Pac. 498.

§ 11002. [9008.] Not to Issue State Warrants Without Authority.

The state auditor shall in no case issue any state warrant unless there is a law authorizing the issue of the same, and every warrant shall state the act under which it is drawn; and if any state auditor shall issue any state warrant not authorized by law, he shall forfeit and pay fourfold the amount of such order to the state, to be recovered by action against the auditor and his sureties on his official bond. [L. '71, p. 97, § 3; Cd. '81, § 2572; L. '90, p. 637, § 6; 1 H. C., § 85.]

See supra, §§ 5512—5515, itemized vouchers to be taken, penalty.

Cited in 2 Wash. 493; 3 Wash. 127; 94 Wash. 173; 98 Wash. 256, 259.

This section does not excuse the auditor from issuing a warrant to a state officer

whose salary is "fixed by law," although there may be no appropriation to cover its payment: State ex rel. Helander v. Clausen, 98 Wash. 253, 167 Pac. 947.

§ 11003. [9009.] Certain Reports to be Printed.

The state auditor shall have printed five hundred copies of each of the reports of the auditor, treasurer, and state board of control; fifteen hundred copies of the report of the superintendent of public instruction, including the necessary rules, blanks, forms, and the school law; and two hundred copies each of the other state reports. [L. '90, p. 637, § 7; 1 H. C., § 86.]

§ 11004. [9010.] Shall Deliver Reports to Governor.

When said reports shall have been printed and delivered to the state auditor, as provided in the last preceding section, he shall deliver them into the custody of the governor, to be by him transmitted to the legislature of the state of Washington. [L. '90, p. 637, § 8; 1 H. C., § 87.]

§ 11005. [9011.] Shall Audit Accounts.

All persons required by law to pay money into the treasury of the state shall, unless otherwise provided, exhibit their accounts and vouchers for state moneys received and paid out during the past fiscal year immediately succeeding the thirtieth day of June in each year, to be audited, adjusted and settled, and the auditor shall proceed without any unnecessary delay to audit, adjust and settle the same and report to the treasurer the balance found due. For the purposes of this section and for the purpose of settling all accounts between the state and the several counties of the state, the fiscal year shall be deemed to begin with the first day of July in each year, and to end with the thirtieth day of June of the succeeding year. [Cf. L. '54, p. 411, § 6; Cd. '81, § 2576; L. '90, p. 638, § 10; 1 H. C., § 90; L. '93, p. 249, § 1.]

§ 11006. [9012.] To Charge Delinquents for Failure to Pay Over Moneys.

If any person so required by law to pay money into the treasury shall fail to pay the amount so found due into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement required, the delinquent shall forfeit to the state the amount of his commission allowed him by law, and also two and one-half per cent a month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment; and the auditor shall charge such delinquent accordingly, and the whole amount of principal and forfeiture may be recovered by action on his official bond. [Cf. L. '54, p. 411, § 7; Cd. '81, § 2577; L. '90, p. 638, § 11; 1 H. C., § 91.]

§ 11007. [9013.] Presentation of Claims—Suits.

All persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled, and allowed, within two years after such claim shall have accrued, and not afterwards. And in all actions brought in behalf of the state, no debt or claim shall be allowed against the state as a setoff, but such as has been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court that the defendant at the time of trial is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the state, sickness, or unavoidable accident. [L. '54, p. 411, § 8; Cd. '81, § 2578; L. '90, p. 638, § 12; 1 H. C., § 92.]

See *supra*, § 886, actions against state.

Presentation of claims to legislature: See § 8195, *supra*.

§ 11008. [9014.] Presentation of Warrants for Payment.

All warrants drawn on the state treasury shall be presented for payment within the period of five years after the date of the issue thereof; and should the payee or legal holder of any such warrant or warrants neglect or fail to present the same for payment within the time specified, it shall be the duty of the state auditor to enter the same as canceled on the books of his office, and to notify the state treasurer of such cancellation: Provided, that should the payee or legal owner of any such canceled warrant or warrants present the same for payment after the lapse of five years from the date of the issue thereof, the state auditor may, upon proper showing by affidavit and the delivery of the canceled warrant into his possession, issue a new warrant in lieu thereof on the state treasurer, and the said treasurer is authorized to pay the same as other warrants are paid. [L. '83, p. 61, § 1; L. '90, p. 638, § 13; 1 H. C., § 93.]

§ 11009. [9015.] Cancellation of Warrants.

All outstanding warrants issued five years prior to the approval of this act shall, if not paid within one year from the date hereof, be can-

celed by the state auditor, as provided in this chapter. [L. '83, p. 61, § 2; L. '90, p. 639, § 14; 1 H. C., § 94.]

§ 11010. [9016.] Duplicate Warrants.

In case of the loss or destruction by fire, or other cause, of any state warrant or warrants issued by the state auditor for the payment of any moneys out of the treasury of the state, the said auditor is hereby authorized and empowered to issue a duplicate or duplicate warrants, in lieu thereof, the said duplicate or duplicates to bear the same number, class, or designation in all respects and to be issued for the same amount as the original in lieu of which such duplicate shall issue: Provided, that the issue of any such duplicate warrant or warrants shall be subject to the provisions of section 11008. [L. '88, p. 236, § 1; L. '90, p. 639, § 15; 1 H. C., § 95.]

§ 11011. [9017.] Preliminaries Before Issuance of Duplicate Warrants.

Before any such duplicate warrant shall be issued, as provided in the last preceding section, the state auditor shall require from the person making application for the issue of such duplicate warrant, to file in his office a written affidavit specifically alleging on oath that he is the proper owner, payee, or legal representative of such owner or payee of the original warrant for which a duplicate is required, giving the date of issue, the number, amount, and for what services or claim said original warrant was issued, and that the same has been lost or destroyed, and has not been paid; and shall also require the person so making application to give a sufficient bond, with one or more sufficient sureties, conditioned to save the state harmless from the payment of the original warrant, and all costs and charges on account thereof. [L. '88, p. 236, § 2; L. '90, p. 639, § 16; 1 H. C., § 96.]

§ 11012. [9018.] Record of Lost or Destroyed Warrants.

The state auditor shall keep a full and complete record, for identification, of all warrants alleged to have been lost or destroyed, and of the issue of any duplicate therefor; and upon the issuance of any such duplicate, he shall enter the cancellation upon the books of his office of the original warrant, and immediately notify the state treasurer of such cancellation. [L. '88, p. 236, § 3; L. '90, p. 640, § 17; 1 H. C., § 97.]

§ 11013. [9019.] Testimony Taken in Settlement of Accounts.

The auditor, whenever he may think it necessary in the settlement of any account or the drawing of any warrant, may examine the party, witnesses, and others on oath or affirmation touching any matter material to be known in the settlement of the account or the drawing of the warrant, and for that purpose he may issue summons and compel witnesses to attend before him and give testimony in the same manner and by the same means allowed in courts of record, and he shall reduce such evidence to writing, and file the same in his office. [Cf. L. '54, p. 411, § 9; Cd. '81, § 2579; L. '90, p. 640, § 18; 1 H. C., § 98.]

See note to § 11001, *supra*.

Cited in 44 Wash. 442.

§ 11014. [9020.] Shall Preserve Documents, Settle Accounts, etc.

All accounts, vouchers, and documents settled or to be settled by the auditor shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who shall require the same. [Cf. L. '54, p. 411, § 10; Cd. '81, § 2580; L. '90, p. 640, § 19; 1 H. C., § 99.]

§ 11015. [9021.] Shall Draw Warrant When, and When not.

In all cases of grants, salaries, pay, and expenses ascertained and allowed by law, found due to individuals from the state when audited, the auditor shall draw a warrant upon the treasury for the amount, but in cases of unliquidated accounts and claims the adjustment and payment of which are not provided by law, no warrant shall be drawn by the auditor or paid by the treasurer, unless the previous appropriation shall have been made by law for that purpose, nor shall the whole amount drawn by and paid under any head ever exceed the amount thus appropriated: Provided, that where an appropriation is made by law to be paid out of the state treasury, it shall be the duty of the state auditor to draw a warrant or warrants upon the state treasurer in accordance with the provisions of such law in favor of the person or persons entitled to the same. [Cf. L. '54, p. 412, § 11; Cd. '81, § 2581; L. '90, p. 640, § 20; 1 H. C., § 100.]

See Const., Art. VIII, § 4.

See supra, § 11002.

See supra, § 5514, unlawful to issue warrants except on vouchers.

As to duty of state auditor to draw warrant for amount of rewards, see § 2247 et seq.

Cited in 98 Wash. 256, 259, 260.

Where a salary is "fixed and ascertained by law," it is the duty of the state auditor to draw a warrant therefor, although the governor vetoed the appropriation made by the legislature to cover it: State ex rel. Helander v. Clausen, 98 Wash. 253, 167 Pac. 947.

Rem. Code, section 8346, giving the state auditor authority to appoint not exceeding three deputy inspectors of public

offices, each to receive a salary of not exceeding \$2,500 per annum, both the number and salaries of the deputies are thereby "ascertained and allowed by law," within the meaning of this section, providing that the auditor shall draw a warrant upon the treasury for the amount of all salaries "ascertained and allowed by law": State ex rel. Helander v. Clausen, 98 Wash. 253, 167 Pac. 947.

§ 11016. [9023.] Reference to Attorney General, When.

If any person interested shall be dissatisfied with the decision of the auditor on any claim, account, or credit, it shall be the duty of the auditor, at the request of such person in writing, setting forth the objections, to refer the same to the attorney general. [Cf. L. '54, p. 412, § 12; Cd. '81, § 2582; L. '90, p. 641, § 21; 1 H. C., § 102.]

§ 11017. [9024.] Oaths, Authority to Administer.

The auditor shall have power to administer all oaths required by law in matters pertaining to the duties of his office. [Cd. '81, § 2586; L. '90, p. 641, § 23; 1 H. C., § 103.]

§ 11018. [9025.] Seal—Copies of Documents as Evidence.

The auditor shall keep a seal of office for the identification of all papers, writings, and documents required by law to be certified by him, and copies so authenticated and certified of all papers and documents lawfully deposited in his office shall be received in evidence as to the original. [Cd. '81, § 2587; L. '90, p. 641, § 24; 1 H. C., § 104.]

CHAPTER V.**STATE TREASURER.**

State funds: See *supra*, §§ 5501—5547.

§ 11019. [9026.] General Duties.

It shall be the duty of the state treasurer,—

1. To receive and keep all moneys of the state not expressly required by law to be received and kept by some other person;

2. To disburse the public moneys only upon warrants drawn upon the treasurer by the state auditor, in the order of their number, date, and issue;

3. To keep a just, true, and comprehensive account of all moneys received and disbursed;

4. To keep a just and true account of each head of appropriations made by law, and the disbursements under the same;

5. To render his accounts to the state auditor in detail, for settlement quarterly, on the thirty-first day of March, thirtieth day of June, thirtieth day of September, and thirty-first day of December, of each year, or oftener if required;

6. To indorse on each warrant the date of payment, the amount of the principal, and the interest due on said date;

7. To report to each house of the legislature, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding year;

8. To give information, in writing, to either house of the legislature, whenever required, upon any subject connected with the treasury, or touching any duty of his office;

9. He shall account for and pay over all moneys on hand as such treasurer to his successor in office, and deliver all books, vouchers, and effects of office to him, and such successor shall receipt therefor;

10. Upon payment of any warrant, he shall take upon the back thereof the signature of the person to whom it is paid, and return the same to the auditor with his quarterly statement. [L. '54, p. 413, § 3; L. '64, p. 52, § 3; L. '71, p. 77, § 2; L. '86, p. 134, § 2; L. '90, p. 642, § 1; 1 H. C., § 105.]

See Const., Art. III, § 19, duties of.

See *supra*, § 5484 et seq., treasurer as fiscal agent.

See *supra*, §§ 10976—10981, salary, term and oath of office.

Cited in 3 Wash. 127; 9 Wash. 198; 13 Wash. 321; 18 Wash. 24; 22 Wash. 548; 51 Wash. 553; 62 Wash. 269.

STATE WARRANTS: See Remington's Digest, States, §§ 30—33.

Negotiability and Transfer: State ex rel. Olympia Nat. Bank v. Lewis, 62 Wash. 266, 113 Pac. 629; State ex rel. Ackerman v. Meath, 87 Wash. 659, 152 Pac. 536.

§ 31. — **Funding, or Redemption:** State ex rel. Hellar v. Young, 18 Wash. 21, 50 Pac. 786.

§ 32. — **Interest on State Warrants:** State ex rel. Theis v. Bowen, 11 Wash. 432, 39 Pac. 618; Spokane & Eastern Trust Co. v. Young, 19 Wash. 122, 52 Pac. 1010.

§ 33. — **Payment:** State ex rel. Pub. Co. v. Lindsley, 3 Wash. 125, 27 Pac. 1019; State ex rel. Hellar v. Young, 21 Wash. 391, 58 Pac. 220; State ex rel. Olympia

Nat. Bank v. Lewis, 62 Wash. 266, 113 Pac. 629.

§ 29. **Warrants—Power and Duty to Issue:** See Remington's Digest, States, § 29; Allen v. Grimes, 9 Wash. 424, 37 Pac. 662; State ex rel. Atty. Gen. v. McGraw, 13 Wash. 311, 43 Pac. 176.

This section does not require that an appropriation of money shall be in any particular form of words, but the same may be by a general act showing the intent: State ex rel. Peel v. Clausen, 94 Wash. 166, 162 Pac. 1.

§ 11020. **Appointment of Assistant and Deputy.**

The state treasurer shall have the power to appoint an assistant state treasurer, who shall have the power to perform any act or duty which may be performed by the state treasurer as such, and in case of a vacancy in the office of state treasurer, perform the duties of said office until the vacancy is filled as provided by law. The state treasurer shall have power to appoint a deputy state treasurer, who shall have the power to perform any act or duty which may be performed by the state treasurer as such. The assistant state treasurer and the deputy state treasurer shall hold office at the pleasure of the state treasurer and shall respectively, before entering upon the duties of their office, take and subscribe, and file with the secretary of state, the oath of office provided by law for other state officers, and shall give surety bonds in such sum as the state treasurer shall deem sufficient for the faithful performance of their duties, which bonds shall be approved and filed as other state officials' bonds. The state treasurer shall be held responsible on his official bond for all official acts of the assistant state treasurer and the deputy state treasurer. [L. '21, p. 119, § 1.]

§ 11021. [9026½.] **Funds from Forest Reserves—Distribution to Counties.**

The state treasurer is hereby directed to turn over to the treasurers of the respective counties within the forest reserves, the amount of money belonging to such county, received from the federal government from such forest reserves, in accordance with an act of congress, approved February, 1, 1905. Where the reserve is situated in more than one county the money shall be distributed in proportion to the area of the respective counties interested, and to that end the state treasurer is hereby authorized and required to obtain the necessary information to enable him to make the distribution on such basis. [L. '07, p. 406, § 1.]

Such money to be expended by the county commissioners for the benefit of the public schools and public roads: See supra, § 4057.

§ 11022. [9027.] **Residence, Bond and Oath.**

The state treasurer shall reside and keep his office at the seat of government, and before entering upon his duties shall execute and deliver to the secretary of state a bond to the state in the sum of two hundred and fifty thousand dollars, to be approved by secretary of state

and one of the judges of the supreme court, conditioned to pay all moneys at such times as required by law, and for the faithful performance of all duties required of him by law, and take an oath of office before some judge or justice of the peace within the state, to be indorsed on his commission, and file a copy thereof, together with the bond, in the office of the secretary of the state. [L. '54, p. 413, § 2; L. '64, p. 51, § 2; L. '71, p. 76, § 1; L. '81, p. 18, § 1; L. '86, p. 133, § 1; L. '90, p. 642, § 2; 1 H. C., § 106.]

See supra, § 10981, oath of office.

Cited in 19 Wash. 489.

§ 11023. [9028.] Records, etc., Open for Public Inspection.

All the books, papers, letters, and transactions pertaining to the office of treasurer shall be open for the inspection of a committee of the legislature, or either branch thereof, to examine or settle all accounts, and to count all money; they shall also be open to the inspection of the public generally during office hours; and when the successor of any such treasurer shall be elected and qualified, the state auditor shall examine and settle all the accounts of such treasurer remaining unsettled, and give him a certified statement showing the balance of moneys, securities, and effects for which he is accountable, which have been delivered to his successor, and report the same to the legislature. [L. '54, p. 414, § 4; L. '64, p. 53, § 4; L. '86, p. 134, § 3; L. '90, p. 643, § 3; 1 H. C., § 107.]

§ 11024. [9029.] Power to Administer Oaths.

The treasurer shall have power to administer all oaths required by law in matters pertaining to the duties of his office. [L. '54, p. 114, § 6; L. '64, p. 53, § 6; L. '71, p. 78, § 5; L. '86, p. 135, § 5; L. '90, p. 643, § 5; 1 H. C., § 109.]

§ 11025. [9030.] Seal of Office—Copies of Documents as Evidence.

The treasurer shall keep a seal of office for the authentication of all papers, writings, and documents required by law to be certified by him, and copies so authenticated of all documents lawfully deposited in his office shall be received in evidence as the originals. [L. '54, p. 414, § 7; L. '64, p. 53, § 7; L. '71, p. 78, § 6; L. '86, p. 135, § 6; L. '90, p. 643, § 6; 1 H. C., § 110.]

§ 11026. [9031.] Forfeiture for Wrongful Refusal to Pay Warrant.

If the state treasurer shall willfully refuse to pay any warrant lawfully drawn upon the treasurer or shall knowingly pay any warrant out of the order of its number, date, and issue, he shall forfeit and pay fourfold the amount to any person injured thereby, to be recovered by action against the treasurer and his sureties on his official bond. [L. '54, p. 414, § 8; L. '64, p. 53, § 8; L. '71, p. 78, § 8; L. '86, p. 135, § 8; L. '90, p. 644, § 7; 1 H. C., § 111.]

See supra, § 5516, indorsement of warrants "not paid for want of funds."

The law of 1886, page 161, § 1, provides "The state treasurer be, and he is hereby, ordered to pay all warrants drawn on the state treasury in the order of their issu-

ance," etc. The title to this act reads "An act ordering the territorial treasurer to pay all warrants in the order of their presentment."

Cited in 3 Wash. 127.

§ 11027. [9032.] Embezzlement—Penalty for.

If any person exercising the office of state treasurer shall fail to account for and pay over all moneys in his hands in accordance with law, or shall unlawfully convert to his own use in any way whatever, or use by way of investment in any kind of property, or loan without the authority of law, any portion of the public money intrusted to him for safekeeping, transfer, or disbursement, or unlawfully convert to his own use any money that may come into his hands by virtue of his office, shall be deemed guilty of embezzlement to the amount of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding fourteen years, and fined a sum equal to the amount of money embezzled. [L. '86, p. 105, § 11; L. '90, p. 644, § 10; 1 H. C., § 114.]

See Const., Art. XI, § 14.

See supra, §§ 2808, 2812, embezzlement.

§ 11028. [9033.] Other Duties.

The state treasurer shall perform such other duties as may be required of him by the Constitution and laws of the state. [L. '90, p. 644, § 11; 1 H. C., § 115.]

See supra, § 11019, and note.

Cited in 19 Wash. 489.

§ 11029. [9034.] Counties to be Credited With Delinquencies.

It shall be the duty of the state treasurer each year, when balancing up the accounts of the several counties, to credit said counties with the amount of delinquent state tax duly reported to him by the state auditor. [L. '86, p. 135, § 7; 1 H. C., § 116.]

See supra, § 4090, credit to delinquent tax account.

CHAPTER VI.

ATTORNEY GENERAL.

§ 11030. [9035.*] Commission, Oath, Bond—Assistants.

The attorney general shall execute a bond to the state of Washington in the sum of five thousand dollars, with sureties to be approved by the governor, conditioned for the faithful performance of his duties and the paying over of all moneys as provided by law which bond shall be forthwith deposited with the secretary of state. The attorney general shall have power to appoint necessary assistants who shall hold office at his pleasure and who shall have the power to perform any act which the attorney general is authorized by law to perform. [L. '21, p. 379, § 1; L. '88, p. 7, § 4.]

See note to § 145, supra, territory construed to mean state.

See supra, §§ 10976—10981, salary, term and oath of office.

§ 11031. [9036.] Additional Bond.

Whenever the governor shall deem any bond filed by the attorney general insufficient, he may require additional bond, in any penalty not exceeding five thousand dollars; and if any person appointed to the office of attorney general shall fail to give bond, or take the oath required of him, within thirty days after he is appointed, the office shall be deemed vacant; and if, being required additional bond as herein provided, he fails to furnish the same within twenty days after notice of such requirement, his office may, in the discretion of the governor, be declared vacant, and filled as provided by law. [L. '88, p. 7, § 5.]

§ 11032. [9037.] Duties of, in General.

The duties of the attorney general shall be,—

1. To consult with and advise the governor and other state officers, and give, when requested, written opinions upon all legal or constitutional questions relating to the duties of such officers respectively;

2. To prepare, when necessary, proper drafts for contracts and other writing relating to subjects in which the state is interested;

3. To give written opinions, when requested by either branch of the legislature, or committees thereof, upon constitutional or legal questions;

4. To enforce the proper application of funds appropriated to the public institutions of the state, and to prosecute corporations for failure or refusal to make the reports required by law;

5. To keep in proper books a register of all cases prosecuted or defended by him, in behalf of the state or its officers, and of all proceedings had in relation thereto, and to deliver the same to his successor in office;

6. To keep in his office a book in which he shall record all the official opinions given by him during his term of office, which book shall be by him delivered to his successor in office;

7. To pay into the state treasury all moneys received by him for the use of the state;

8. To attend to and perform any other duties which may from time to time be required of him by law. [L. '88, p. 8, § 6; 1 H. C., § 117.]

See Const., Art. III, § 21, duties and salary of attorney general.

See supra, § 112, powers and duties of attorney general in relation to proceedings in courts.

See supra, § 10878, duties as to inheritance taxes.

See supra, § 10982, subdivisions 5, 6 and 7, power of governor over attorney general in certain cases.

See supra, § 11016, duties as to claims against state.

Cited in 3 Wash. 65, 66; 28 Wash. 497; 51 Wash. 586; 63 Wash. 106.

Powers and Duties: See Remington's Digest, Atty. Gen., § 3; Jones v. Reed, 3 Wash. 57, 27 Pac. 1067; State ex

rel. Attorney General v. Seattle Gas etc Co., 28 Wash. 488, 68 Pac. 946, 70 Pac. 114; Ritchie v. State, 42 Wash. 653, 85 Pac. 417.

§ 11033. [9038.] Must Report Biennially to Governor and Legislature.

It shall be the duty of the attorney general to prepare and report to the governor and the legislature, at or before the commencement of each biennial session of the legislature, in the manner provided by law,

a concise statement of all matters pertaining to his official duties, making such suggestion for lessening the public expenses and promoting frugality in the public offices as shall be deemed expedient and proper. [L. '88, p. 8, § 7; 1 H. C., § 118.]

§ 11034. [9039.] To Execute Bonds in Judicial Proceedings.

The attorney general is hereby authorized to execute on behalf of the state of Washington appeal or any other bonds required to be given by the state in any judicial proceedings to which it is a party in any court whatsoever, and to procure sureties thereon. [L. '05, p. 203, § 1.]

CHAPTER VII.

JUDGES OF THE SUPREME COURT.

The supreme court: See supra, § 1 et seq.

§ 11035. [9040.] Election, Term of Office, etc.

The supreme court shall consist of five judges, who shall be elected by the qualified electors of the state at large at the general state election, at the time and places at which state officers are elected, next preceding the expiration of the term of office of their predecessors, respectively, and hold their offices for the term of six years from and after the second Monday in January next after their election: Provided, that the justices elected on the first Tuesday of October, 1889, shall have so classified or shall so classify themselves by lot, that two of them shall go out of office at the end of three years, two of them at the end of five years, and one at the end of seven years from the second Monday in January, 1890; and an entry of such classification shall have been or shall be made in the minutes of the court, signed by such judges, and they shall cause the result thereof to be certified to the secretary of state, and filed in his office. [L. '90, p. 321, § 1; 1 H. C., § 151.]

The number of judges was increased to seven by Laws of 1905, page 14, § 1; and to nine by the next section.

Cited in 29 Wash. 340, 346.

Constitution, Article IV, section 3, providing that the terms of judges elected to the supreme court shall be six years from and after the second Monday in January next succeeding their election, does not apply to a judge elected to fill a

vacancy for the remainder of the unexpired term, and a statute fixing the term of appointive judges for a period short of the succeeding general state election would not be in conflict therewith: State ex rel. Murphy v. McBride, 29 Wash..335, 70 Pac. 25.

§ 11036. [9041.] Number of Judges.

The supreme court, from and after the taking effect of this act, shall consist of nine judges. [L. '09, p. 33, § 1.]

Under Constitution, Article IV, section 2, providing for five judges of the supreme court, "a majority of whom shall be necessary to form a quorum," and which further provides that the legislature may increase the number of judges, "and may provide for separate departments," it was competent for the legislature, by this act, to increase the number to nine judges, and provide for two de-

partments of the court, consisting of five judges each, three of whom shall constitute a quorum for the transaction of business in a department; and a litigant is not entitled, as a matter of right, to a rehearing by the full court sitting en banc, authorized by section 4 of the act (section 9 of this code): State ex rel. Vanderveer v. Gormley, 53 Wash. 543, 102 Pac. 435.

§ 11037. [9042.] Time of Election—First Five Judges.

There shall be elected by the qualified electors of this state, on the first Tuesday after the first Monday in November, 1894, and on the first Tuesday after the first Monday in November every two years thereafter, as many judges of the supreme court as there may be judges of said court whose terms of office shall expire on the second Monday in January next succeeding such election. [L. '93, p. 8, § 1.]

§ 11038. [9042½.] Time of Election—First Two Additional Judges.

At the election of judges for the term commencing from and after the second Monday in January, 1909, three judges shall be elected for the full term of six years and likewise every six years thereafter. [L. '05, p. 14, § 3.]

§ 11039. [9043.] Time of Election—Terms.

At the next general election, and at each biennial general election thereafter, there shall be elected three judges of the supreme court, to hold for the full term of six years, and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. [L. '09, p. 33, § 2; L. '11, p. 613, § 1.]

§ 11040. [9043-1.] Election to Fill Vacancy—Commencement of Term.

A person elected judge of the supreme court to fill a vacancy for an unexpired term shall not qualify for office until the second Monday in January succeeding his election. [L. '11, p. 614, § 2.]

Cited in 93 Wash. 255.

This section may be sustained as a limitation within which a judge elected to fill a vacancy shall qualify, but not

as a legislative construction of the Constitution: State ex rel. Sears v. Gilliam, 93 Wash. 248, 160 Pac. 757.

§ 11041. [9044.] Chief Justice, Choice of—Duty.

The judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall be chief justice, and in case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside. [L. '90, p. 321, § 2; 1 H. C., § 152.]

§ 11042. [9045.] Report to Governor.

The judges of the supreme court shall, on or before the first day of January of each year, report in writing to the governor such defects and omissions in the laws as they may believe to exist. [L. '90, p. 324, § 16; 1 H. C., § 155.]

§ 11043. [9046.] Oath of Judges.

The several judges of the supreme court, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that

I will support the Constitution of the United States and the Constitution of the state of Washington, and that I will faithfully and impartially discharge the duties of the office of judge of the supreme court of the state of Washington to the best of my ability." Which oath or affirmation may be administered by any person authorized to administer oaths, a certificate whereof shall be affixed thereto by the person administering the oath. And the oath or affirmation so certified shall be filed in the office of the secretary of state. [L. '90, p. 324, § 14; 1 H. C., § 156.]

As to jurisdiction and general powers of the supreme court, see *supra*, § 1 et seq. For proceedings in the supreme court on appeals, see *supra*, § 1716 et seq.

§ 11044. [9047.] Vacancy—How Filled.

If a vacancy occur[s] in the office of a judge of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election at which a judge or judges of the supreme court shall be elected, and the judge so elected may qualify at any time within thirty days after his election, and shall hold the office for the unexpired term. [L. '90, p. 321, § 3; 1 H. C., § 153; L. '93, p. 8, § 2.]

CHAPTER VIII.

JUDGES OF THE SUPERIOR COURTS.

The superior court: See § 15 et seq.

§ 11045. [9050.] Judges—Apportionment and Election.

At the general election to be held in 1908 there shall be elected in the county of King seven superior-judges; in the county of Pierce, four superior judges; in the counties of Thurston and Mason jointly, one superior judge; in the county of Chehalis, two superior judges; in the counties of Skagit and San Juan, two superior judges; in the county of Whatcom, two superior judges; in the counties of Jefferson, Island and Clallam jointly, one superior judge; in the counties of Pacific, Lewis and Wahkiakum jointly, one superior judge; in the counties of Clark, Skamania, Cowlitz and Klickitat jointly, one superior judge; in the county of Spokane, five superior judges; in the county of Stevens, one superior judge; in the county of Whitman, one superior judge; in the county of Walla Walla, one superior judge; in the counties of Columbia, Garfield and Asotin, one superior judge; in the county of Snohomish, one superior judge; in the county of Kitsap, one superior judge; in the county of Kittitas, one superior judge; in the county of Yakima, one superior judge; in the counties of Benton, Franklin and Adams jointly, one superior judge; in the county of Lincoln, one superior judge; in the counties of Ferry and Okanogan jointly, one superior judge; in the counties of Douglas and Grant jointly, one superior judge; in the county of Chelan, one superior judge. [L. '90, p. 341; L. '91, p. 117; 1 H. C., § 163; L. '95, p. 176; L. '03, p. 63, § 1; L. '05, p. 26, § 1; L. '05, p. 59, § 1; L. '07, p. 140, § 1; L. '07, p. 401, § 1; L. '09, p. 13, § 1; L. '09, p. 11, § 1; L. '09, p. 96, § 1; L. '09, p. 227, § 1; L. '09, p. 22, § 9.]

Adapted from the acts cited.

See *infra*, §§ 11046, 11047, changes.

See *supra*, § 11054, to wear gowns.

Acts of 1909 added one judge for each of the counties of King, Pierce, Spokane and Chehalis, and added Grant to the Douglas County district.

Cited in 15 Wash. 404.

§ 11046. [9050-1.] Additional Judges.

Hereafter there shall be two judges of the superior court in and for Snohomish county; two judges in and for Yakima county; nine judges in and for King county; for the county of Lewis, one superior judge; for the counties of Pacific and Wahkiakum, one superior judge; for the counties of Cowlitz, Skamania and Klickitat, one superior judge; for the county of Clarke, one superior judge; and for the counties of Thurston and Mason, two superior judges. [L. '11, p. 134, § 1; L. '11, p. 332, § 1; L. '11, p. 375, § 1; L. '11, p. 642, §§ 1, 2; L. '11, p. 644, §§ 1, 2; L. '13, p. 47, § 1.]

Adapted from the acts cited.

§ 11047. New Classification of Certain Counties and Districts.

The counties of Jefferson and Clallam shall constitute one judicial district, and be entitled to one superior judge; the counties of Snohomish and Island shall constitute one judicial district, and be entitled to two superior judges; the counties of Whatcom and San Juan shall constitute one judicial district and be entitled to two superior judges; the county of Skagit shall constitute one judicial district and be entitled to one superior judge. [L. '17, pp. 340, 341, §§ 1—5.]

Adapted.

§ 11048. [9051.] Terms of Office.

The superior judges elected under the Constitution, at the election held October 1, 1889, shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and the additional judge to be elected at the general election of 1890, and thereafter the term of office of all superior judges in this state, shall be for four years from the second Monday in January next succeeding their election, and until their successors are elected and qualified. [L. '90, p. 342, § 3; 1 H. C., § 164.]

See *supra*, § 10967, salary, how paid.

Cited in 82 Wash. 624.

Term and Tenure of Office in General:
See Remington's Digest, States, § 5; State

ex rel. Dyer v. Twichell, 4 Wash. 715,
31 Pac. 19; *State ex rel. Linn v. Millett*,
20 Wash. 221, 54 Pac. 1124.

§ 11049. [9053.] Vacancy—How Filled.

If a vacancy occur in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term. [L. '90, p. 342, § 4; 1 H. C., § 165.]

§ 11050. [9054.] Report to Judges of Supreme Court.

Superior judges shall, on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest. [L. '90, p. 344, § 14; 1 H. C., § 166.]

§ 11051. [9055.] Oath of Judge of Superior Court.

Every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the state of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state. Such oath or affirmation to be in the form substantially the same as prescribed for judges of the supreme court. [L. '90, p. 344, § 15; 1 H. C., § 167.]

§ 11052. [9056.] Bailiffs and Criers.

Every court of record shall have the power to appoint a crier and as many bailiffs as may be necessary for the orderly and expeditious dispatch of the business. [L. '91, p. 94, § 13; 2 H. C., § 83.]

See *supra*, §§ 10972, 10973, pay of bailiffs.

CHAPTER IX.

SALARIES AND GOWNS OF SUPREME AND SUPERIOR COURT JUDGES.

§ 11053. [9048,* 9052.*] Salaries Fixed.

Each judge of the supreme court shall receive an annual salary of seven thousand dollars (\$7,000). Each judge of the superior court shall receive an annual salary of four thousand five hundred dollars (\$4,500): Provided, that in counties of the first class each judge of the superior court shall receive an annual salary of five thousand dollars (\$5,000), and in accordance with and for the purpose of effectuating the legislative intent and object in the enactment of said chapter 77, of the Session Laws of 1919 and also this act, the term "counties of the first class" is hereby understood, interpreted and declared to include class A counties. [L. '21, p. 753, § 1; L. '19, p. 154, § 1; L. '07, p. 95, § 1.]

See *supra*, § 10965, salary, how paid.

See *supra*, § 10967, how paid by county.

The legislature had power to provide by Rem. & Bal. Code, § 9052, that in counties of the first class, the county commissioners may increase the salaries to an amount not exceeding \$4,000, all of the increase to be paid by the county: Salary of Superior Court Judges, *In re*, 82 Wash. 623, 144 Pac. 929.

§ 11054. [9049.] To Wear Gowns.

Each of the judges of the supreme court and the judges of the superior courts shall in open court during the presentation of causes, before them, appear in and wear gowns, made of black silk, of the usual style of judicial gowns. [L. '09, p. 716, § 1.]

Cited in 74 Wash. 92.

CHAPTER X.

CLERK, REPORTER AND REPORTS OF SUPREME COURT.

§ 11055. [9057.] Appointment of Clerk and Reporter.

The judges of the supreme court shall appoint a clerk and a reporter of the decisions of the court, removable at their pleasure, each of whom shall receive an annual salary as shall be provided by law: Provided, that the legislature may at any time provide for the election of such clerk, and prescribe the term of his office. [L. '90, p. 324, § 13; 1 H. C., § 154. Cf. 2 H. C., § 68.]

See Const., Art. IV, §§ 18, 22, appointment of.

See supra, § 10969, salary of clerk.

See infra, § 11063, salary of reporter.

§ 11056. [9058.] Oath and Bond of Clerk.

Before entering upon the duties of his office, he shall take an oath of office, and give bond in such a sum, with surety and condition, as the said court or judges thereof shall require, which bond shall be deposited with the secretary of state. The bond shall be to the state of Washington, and any party aggrieved by the official acts or omissions of said clerk may have his action thereon. [Cf. L. '54, p. 366, § 2; L. '63, p. 417, § 2; Cd. '81, § 2175; 2 H. C., § 69.]

§ 11057. [9059.] Clerk to Keep Office at Seat of Government.

The clerk shall keep his office at the seat of government, and shall keep it open at all seasonable hours, and shall keep such records and books as are prescribed by law and the supreme court. [L. '54, p. 366, § 3; L. '63, p. 317, § 3; Cd. '81, § 2176, and see § 2124; 2 H. C., § 70.]

See supra, § 77, duties, powers, etc., of clerk of supreme court.

See supra, § 497, schedule of fees.

§ 11058. [9060.] Supreme Court Reporter, Duty of.

The reporter of the decisions of the supreme court must prepare a report of such cases decided as he may, by the court, be directed to report. [L. '90, p. 320, § 1; 1 H. C., § 3097.]

§ 11059. [9061.] Further Duties of Reporter.

He shall prepare such decisions for publication by giving the title of each case, a syllabus of the points decided, a brief statement of the facts bearing on the points decided, the names of the counsel, and a reference to such authorities as are cited from standard reports and text-books that have a special bearing on the case, and he shall prepare a full and comprehensive index to each volume, and prefix a table of cases reported. [L. '90, p. 320, § 2; 1 H. C., § 3098.]

§ 11060. [9062.] Publication of Reports.

The reports must be published under the supervision of the court, and to that end each of the judges must be furnished, by the reporter, with

proof sheets of each volume thirty days before its final publication. [L. '90, p. 320, § 3; 1 H. C., § 3099.]

§ 11061. [9063.] Corrections by Judges.

Within thirty days after such proof sheets are furnished, the judges must return the same to the reporter, with corrections or alterations, and he must make the corrections or alterations accordingly. [L. '90, p. 320, § 4; 1 H. C., § 3100.]

§ 11062. [9064.] Reporter may Take Opinions.

The reporter may take the original opinions and papers in each case from the clerk's office, and retain them in his possession not exceeding sixty days. [L. '90, p. 320, § 5; 1 H. C., § 3101.]

§ 11063. [9065.] Salary of Reporter.

The annual salary of the reporter of the decisions of the supreme court shall be three thousand five hundred (\$3,500) dollars. [L. '09, p. 578, § 1. Cf. L. '90, p. 320, § 6; L. '91, p. 107, § 1; 1 H. C., § 3102; L. '97, p. 38, § 1.]

§ 11064. [9066.*] Supreme Court Reports—Style—Paper—Binding.

The reports of the supreme court of the state of Washington shall be published in volumes of not less than seven hundred (700) pages, exclusive of indices and tables of cases reported, cases cited and statutes construed. The style of type used, the general typography and binding, shall be equal in quality and generally similar to that used in volume thirty-five (35) Washington Reports, official edition: Provided, that the reporter may require the publisher to have two more "ems" on each line and two more lines on each page. The publisher, under its contract with the state, may use in the publication of the reports, regular law book paper equal in quality to that used in volumes thirty-five (35) and ninety-one (91) of the Washington Reports, and of weight not lighter than forty-five (45) pounds to the ream, when approved by the chief justice of the supreme court, and the reporter and the chief justice may authorize the furnishing of any portion of the volumes furnished to the state to be bound in buckram instead of sheep. [L. '17, p. 326, § 1. Cf. L. '05, p. 330, § 1; L. '90, p. 327, § 1; L. '91, p. 74, § 1; 1 H. C., § 3103; L. '95, p. 97, § 1.]

§ 11065. [9067.] Reports—Published by Contract.

The reporter of the supreme court shall have no pecuniary interest in the volumes of the reports, but they must be published under the supervision of the chief justice of the supreme court and reporter, by contract, for periods of ten years each, to be entered into as hereinafter provided, with a responsible person or persons who shall agree to publish and sell said reports on the terms most advantageous to the state and to individuals resident in this state, and at a rate not to exceed two dollars and fifty cents (\$2.50) per bound volume, or three dollars per bound volume and the advance sheets of the opinions in such bound volume, delivered to the subscriber. [L. '05, p. 330, § 2.]

See *infra*, § 11069, prices of reports and advance sheets.

§ 11066. [9068.] Advertising of Proposals.

Before entering into said contract, it shall be the duty of the reporter to advertise for proposals for the publication of said reports once each week for four consecutive weeks, in two daily papers published within this state. Such publication shall be commenced on the second Monday in June, 1905, and on the second Monday in June every ten years thereafter. The proposals shall be opened by the chief justice of the supreme court and the reporter of said court. It shall be the duty of the chief justice and the reporter of the supreme court to consider all proposals for the publication of said reports so submitted, and to award the contract to the person or persons who will agree to publish and sell the same, on the terms most advantageous to the state and to individuals resident in the state. The reporter shall execute the contract on behalf of the state. [L. '05, p. 330, § 3.]

§ 11067. [9069.] Contract, What to Provide.

The contract must provide:

First. That each volume shall be published within sixty (60) days after the manuscript is delivered by the reporter to the publisher, and that stereotype plates be made of each volume to the end that the same may never be out of print.

Second. That the entire manufacture of said volumes shall be done within the state of Washington.

Third. That the volumes or any portion thereof, or any notes, indices, or tables of cases, that may be published in connection therewith, shall not be copyrighted by the publisher, but it may be optional with the legislature at any time to direct the reporter to copyright the volumes for the benefit of the state.

Fourth. That the publisher shall sell three hundred (300) copies of each volume to the state at the price named in the proposals, and keep on hand and for sale within the state, to individuals resident in this state, at the price therefor, named in the proposals, a sufficient number of each volume to supply all demands for a period of ten (10) years from the date of publication thereof.

Fifth. The contract shall further provide that the publisher shall issue once each week in pamphlet form, the opinions of the supreme court, with appropriate head notes, and table of cases; and sell the same to the subscribers to the Washington reports at the price fixed in the proposals; and also, shall agree to mail without cost, a copy of each weekly issue, to each supreme judge, the reporter and attorney general, and to each judge of the superior court and prosecuting attorney of each county in this state, six copies to the state library, and six copies to the law department of the state university.

Sixth. The contract shall further provide that the manufacture of the volumes shall be done to the entire satisfaction of the chief justice of the supreme court and the reporter, and that in case of willful failure or refusal on the part of the publisher to comply with the terms of the contract, the reporter may, with the approval of the chief justice, declare the same forfeited and void, by the giving of written notice to the pub-

lisher to that effect, and the chief justice and reporter shall re-let the contract for the remainder of the unexpired term of the contract, as soon thereafter as practicable, upon new proposals to be called for, considered and awarded in the manner provided for in section 11066.

Seventh. That the contractor give a sufficient bond, running to the state of Washington, which must be approved by the reporter, for the fulfillment of the terms of the contract, in the sum of ten thousand dollars (\$10,000). [L. '05, p. 331, § 4.]

§ 11068. Subject Index for Advance Sheets.

The publisher of the decisions of the supreme court of the state of Washington is hereby authorized to publish with each issue of the advance sheets a subject index thereof, to be prepared by the reporter of the court. [L. '19, p. 287, § 1.]

§ 11069. Prices for Reports and Advance Sheets.

The publishers, for such additional service, may charge not to exceed four dollars per annum for such advance sheets, and may continue to charge, for the remainder of the period of its present contract, with the state, one dollar and seventy-five cents per volume for the bound volume of reports, and may charge for the bound volume and the advance sheets not to exceed two dollars and twenty-five cents per volume. [L. '19, p. 287, § 2.]

§ 11070. Binding of Reports.

The decisions may be bound in buckram instead of sheep but the publishers shall furnish to subscribers desiring sheep binding the volumes so bound at a cost not to exceed twenty-five cents additional per volume. [L. '19, p. 288, § 3.]

§ 11071. Contract With Bancroft-Whitney Company—Modification.

The chief justice and reporter of the supreme court are hereby authorized to modify the contract between the state of Washington and Bancroft-Whitney Company, publishers, entered into July 13, 1915, for the publication of the reports of the supreme court of Washington, to permit said publishers to charge not to exceed two dollars and twenty-five cents (\$2.25) per volume for the bound volume of reports, and two dollars and seventy-five cents (\$2.75) per volume for the bound volume and the advance sheets, for the period of two years after the taking effect of this act: Provided, that there shall be no increase in the price of the volumes furnished to the state under said contract. [L. '21, p. 652, § 1.]

§ 11072. [9070.] Extra Copies to Library.

On the publication of each volume of reports the supreme court must purchase for the use of the state, from the publisher to whom the contract is awarded, three hundred (300) copies of said volume at the price named in the contract, and deliver the same to the librarian of the state

STATE OYSTER COMMISSION—STEAM VESSELS.

library, who shall distribute same as required by law, and the remaining copies, if any there be, shall be deposited in the state library. [L. '05, p 332, § 5.]

State Oyster Commission. See "Fish and Oysters," § 5775.

State Penitentiary. See "Prisons and Reformatories," § 10210.

State Printer. See "Public Printer."

State Reformatory. See "Prisons and Reformatories," § 10280.

State Registrar. See "Health," § 6020; "State Boards," etc., § 10815.

State Roads. See "Highways," § 6807.

State School for the Deaf and Blind. See "Education," § 4644.

State School, Custodial. See "Education," § 4655.

State School for Girls. See "Education," § 4631.

State Sealer. See "Weights and Measures," § 11607.

State Superintendent of Public Instruction. See "Education," § 4521.

State Tax Commissioner. See "Taxation."

State Training School. See "Prisons and Reformatories," § 10299;
"Education," § 4624.

State Treasurer. See "State Officers," § 11019.

State University. See "Education," § 3416.

State University Lands. See "Finance," § 5546; "Lands of the State."

Statistican, Industrial. See § 10835.

Statistics. See "Health," § 6011; "State and State Boards," § 10933.

Statute of Frauds. See "Frauds"; "Real Property."

Statute of Limitations. See §§ 155—178.

Steam Vessels. See "Navigation," § 9843.

TITLE LXXVII.

STREET AND ELECTRIC RAILWAYS.

See supra, § 5430, electric light and power companies.

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CHAPTER I.—REGULATIONS AS TO EMPLOYEES AND APPLIANCES.

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CHAPTER I.

REGULATIONS AS TO EMPLOYEES AND APPLIANCES.

§ 11073. [9071.] Competent Men shall be Employed.

Hereafter street railway or street-car companies, or street-car corporations, shall employ none but competent men to operate or assist as conductors, motormen or gripmen upon any street railway, or street-car line in this state. [L. '01, p. 215, § 1. Cf. L. '97, p. 17, § 1.]

See supra, §§ 7648, 7649, hours for labor.

§ 11074. [9072.] Instruction Required—Emergency.

A man shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or street-car companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motorman or gripman on a car or dummy in actual service on the particular street railway or street-car line for which the service of an additional man or additional men may be required: Provided, that during a strike on the street-car lines the railway companies may employ competent men who have not worked three days on said particular street-car line. [L. '01, p. 215, § 2.]

§ 11075. [9073.] Violations—Penalty.

Any violation of section 11073 by the president, secretary, manager, superintendent, assistant superintendent, stockholder or other officer or employee of any company or corporation owning or operating any street railway or street-car line or any receiver of street railway or street-car

company, or street railway or street-car corporations appointed by any court within this state to operate such car line shall, upon conviction thereof, be deemed guilty of a misdemeanor, and subject the offender to such offense to a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court. [L. '01, p. 215, § 3. Cf. L. '97, p. 18, § 2.]

§ 11076. [9074.] Cars to have Fenders.

Every street-car run or used on any street-car line in the state of Washington shall be provided with good and substantial aprons, pilots or fenders, and which shall be so constructed as to prevent any person from being thrown down and run over or caught beneath or under such car. [L. '97, p. 281, § 1.]

Validity of statute requiring equipment of street-cars with fenders.
Ann. Cas. 1912B, 846.

Duty as to equipping street-cars so as to avoid or minimize injury to persons or animals on or near track. L. R. A. 1915A, 746.

§ 11077. [9075.] Penalty.

The owners or managers operating any street-car line failing to comply with the provisions of the last section shall forfeit and pay to the state of Washington a penalty of not less than twenty-five dollars for each and every violation of this and the last section, and each car run shall be considered a separate violation of the last preceding section, and every period of five days shall be deemed a separate violation of this and the last section; and all moneys collected under and by virtue of this and the last section shall be paid into the common school fund. [L. '97, p. 282, § 2.]

§ 11078. [9076.] Corporations to Provide Weather-guards.

All corporations, companies or individuals owning, managing or operating any street railway or line in the state of Washington, shall provide, during the rain or winter season, all cars run or used on its or their respective roads with good, substantial and sufficient vestibules, or weather-guards, for the protection of the employees of such corporation, company or individual. [L. '95, p. 360, § 1.]

Validity of statute requiring street railway to provide vestibule, seat or other convenience or protection

for motorman. 2 Ann. Cas. 781; Ann. Cas. 1914D, 616.

§ 11079. [9077.] Manner of Construction.

The vestibules or weather-guards, provided for in the last section, shall be so constructed as to protect the employees of such company, corporation or individual from the wind, rain or snow. [L. '95, p. 360, § 2.]

§ 11080. [9078.] Penalty.

Any such street railway company, corporation or individual, as mentioned in the preceding sections, failing to comply with the provisions of this act, shall forfeit and pay to the state of Washington a

penalty of not less than fifty dollars nor more than two hundred and fifty dollars for each and every violation of this act, and each period of ten days that any such company, corporation or individual shall fail to comply with the provisions of this act, or for each car used by such corporation, company or individual not in conformity with this act, shall be taken and deemed to be a separate violation of this act, and all moneys collected under and by virtue of the provisions of this act shall be paid into the common school fund of the state of Washington. [L. '95, p. 360, § 3.]

"This act" refers to the two last preceding sections.

§ 11081. [9079.] Duties of Prosecuting Attorney.

It shall be the duty of the prosecuting attorneys of the various counties of this state to see that the provisions of the last five sections are complied with. [L. '95, p. 361, § 4; L. '97, p. 282, § 3.]

CHAPTER II.

CORPORATE RIGHTS.

§ 11082. [9080.] Franchise—By Whom Granted—Application—Hearing.

The legislative authority of the city or town having control of any public street or road, or where such street or road is not within the limits of any incorporated city or town, then the board of county commissioners wherein such road or street is situated, may grant authority for the construction, maintenance and operation of electric railroads or railways, motor railroads or railways and railroads and railways of which the motive power is any power other than steam, together with such poles, wires and other appurtenances upon, over, along and across any such public street or road and in granting such authority the legislative authority of such city or town or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such railroads or railways and their appurtenances shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be maintained and operated: Provided, that hereafter, on application being made to the board of county commissioners for such authority, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least thirty days before the day fixed for such hearing, and by publishing a like notice three times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time

by order of the board. If, after such hearing, the board shall deem it to be for the public interest to grant such authority in whole or in part, the board may make and enter the proper order granting the authority applied for or such part thereof as the board deems to be for the public interest, and shall require such railroad or railway and its appurtenances to be placed in such location on or along the road or street as the board finds will cause the least interference with other uses of the road or street. In case any such railroad or railway, is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right of way, if such crossing is so constructed and maintained as to do no unnecessary damage: Provided, that any person or corporation constructing such crossing or operating such railroad or railway on or along such county road or public street shall be liable to the county for all necessary expense incurred in restoring such county road or public street to a suitable condition for travel. [L. '03, p. 364, § 1; L. '07, p. 192, § 1.]

See supra, § 8966, city control over.

See supra, § 9488, city may construct.

See supra, §§ 9509—9511, sale by city.

Franchises for electric light and power companies: See supra, § 5430.

See supra, §§ 10510—10534, crossing highways, etc., regulation by railroad commission.

Cited in 50 Wash. 192; 55 Wash. 232, 238, 240, 241; 67 Wash. 12; 72 Wash. 346, 347; 80 Wash. 166; 83 Wash. 329, 330; 87 Wash. 585; 108 Wash. 429.

FRANCHISE RIGHTS: See Remington's Digest, St. R. R., §§ 1—7.

§ 1-1. Grant of Franchises or Privileges: Benton v. Seattle Elec. Co., 50 Wash. 156, 96 Pac. 1033; Ewing v. Seattle, 55 Wash. 229, 104 Pac. 259; Dolan v. Puget Sound Traction, Light & Power Co., 72 Wash. 343, 130 Pac. 353; State ex rel. Tacoma R. & P. Co. v. Public Service Com., 101 Wash. 601, 172 Pac. 890; Seattle v. Puget S. Tr. L. & P. Co., 103 Wash. 41, 174 Pac. 464; State ex rel. Seattle v. Public Service Com., 103 Wash. 72, 173 Pac. 737.

Power to grant to a railroad company the right to tunnel under, and use land under the surface of the street, does not include the right to grant the exclusive use of part of a street for the purpose of descending to the grade under the street: State ex rel. Schade Brewing Co. v. Superior Court, 62 Wash. 96, 113 Pac. 576.

Power to alter streets, change grades and exercise general control over streets does not include the power to surrender the use of any part of the surface thereof: State ex rel. Schade Brewing Co. v. Superior Court, 62 Wash. 96, 113 Pac. 576.

Power to authorize the location of a railroad "in" a street does not imply or

mean power to grant an exclusive right to use the street: State ex rel. Schade Brewing Co. v. Superior Court, 62 Wash. 96, 113 Pac. 576.

This section authorizes the city, by clear and unmistakable language, to grant a franchise giving a street railway company the right to build a track on a trestle in a portion of the street, excluding the public therefrom, upon condemnation of the abutter's easements of access, light and air, under the next section: State ex rel. Ford v. Superior Court, 67 Wash. 10, 120 Pac. 514.

§ 2. Nature and Extent of Franchises and Privileges in General: Spokane St. Ry. Co. v. Spokane Falls, 6 Wash. 521, 33 Pac. 1072; Wood v. Seattle, 23 Wash. 1, 62 Pac. 135, 52 L. R. A. 369; Tacoma v. Boutelle, 61 Wash. 434, 112 Pac. 661; State ex rel. Olympia v. Olympia Light & Power Co., 91 Wash. 519, 158 Pac. 85.

§ 3. Construction of Franchises: Wood v. Seattle, 23 Wash. 1, 62 Pac. 135, 52 L. R. A. 369; McGilvra v. Seattle Elec. Co., 61 Wash. 38, 111 Pac. 896, Ann. Cas. 1912B, 1020; State ex rel. Tacoma v. Tacoma R. & Power Co., 61 Wash. 507, 112 Pac. 506, 32 L. R. A. (N. S.) 720; Tacoma v. Boutelle, 61 Wash. 434, 112 Pac. 661; State ex rel. Linhoff v. Seattle Renton etc. Co., 62 Wash. 544, 114 Pac. 431; Peterson v. Tacoma R. & Power Co., 60 Wash. 406, 111 Pac. 338, 140 Am. St. Rep. 936; Dolan v. Puget Sound Traction, Light & Power Co., 72 Wash. 343, 130

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§ 4. — **Forfeiture or Surrender:** Wood v. Seattle, 23 Wash. 1, 62 Pac. 135, 52 L. R. A. 369; Furth v. West Seattle, 37 Wash. 387, 79 Pac. 936; Crawford v. Seattle, Renton & Southern R. Co., 97 Wash. 70, 165 Pac. 1070.

§ 4-1. **Location—Consent of Highway Officers:** McGilvra v. Seattle Elec. Co., 61 Wash. 38, 111 Pac. 896, Ann. Cas. 1912B, 1020.

§ 5. **Acquisition of Rights in Streets and Roads—License or Consent of Municipality:** Seattle v. Columbia etc. R. R. Co., 6 Wash. 379, 33 Pac. 1048; Spokane St. Ry. Co. v. Spokane Falls, 6 Wash. 521, 33 Pac. 1072; State ex rel. Olympia v. Olympia Light & Power Co., 91 Wash. 519, 158 Pac. 85; Seattle v. Puget S. Tr. L. & P. Co., 103 Wash. 41, 174 Pac. 464.

§ 6. **Nature and Extent of Rights in Streets:** Spokane St. Ry. Co. v. Spokane Falls, 6 Wash. 521, 33 Pac. 1072.

§ 6-1. **Rights in and Use of Private Property Acquired:** Seattle, Renton & Southern R. Co. v. Seattle, 70 Wash. 264, 126 Pac. 531.

§ 7. **Motive Power—Right to Use Particular Motive Power:** Spokane St. Ry. Co. v. Spokane Falls, 6 Wash. 521, 33 Pac. 1072; Seattle Electric Co. v. Snoqualmie Falls Power Co., 40 Wash. 380, 82 Pac. 713, 1 L. R. A. (N. S.) 1032; McGilvra v. Seattle Elec. Co., 61 Wash. 38, 111 Pac. 896, Ann. Cas. 1912B, 1020.

This section, authorizing railroads to cross highways, has no reference to the maintenance of crossings and does not affect the common-law duty to keep the crossing in reasonable repair: Bullock v.

Yakima Valley Transp. Co., 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

Duty to Operate: See Remington's Digest, St. R. R., § 9; State ex rel. Grinsfelder v. Spokane St. Ry. Co., 19 Wash. 518, 53 Pac. 719, 67 Am. St. Rep. 739, 41 L. R. A. 515; Wood v. Seattle, 23 Wash. 1, 62 Pac. 135, 52 L. R. A. 369.

This section empowering county commissioners to grant franchises for railway systems upon public roads outside the limits of incorporated cities and towns and to prescribe the terms and conditions on which they may be enjoyed does not expressly or by implication confer power upon the commissioners to consent to an abandonment of any public duty imposed upon or assumed by common carriers: Day v. Tacoma R. & Power Co., 80 Wash. 161, 141 Pac. 347, L. R. A. 1915B, 547.

Duration of franchise granted street railway company. 2 A. L. R. 1105.

Rights of street railway under franchise or contract as affecting power of public service commission with respect to regulation. 5 A. L. R. 44.

Estoppel of municipality to deny that it gave its consent to franchise for use of street by street railway company. 7 A. L. R. 1248.

Power to compel street railway to complete its road. L. R. A. 1918E, 321.

Grant of street railway franchise as extending to new street or subsequently annexed territory. 18 Ann. Cas. 1118; 47 L. R. A. (N. S.) 608.

Power of public service commission to require street railroad to extend its line or build new line to new territory. 2 A. L. R. 983.

§ 11083. [9081.] Right of Eminent Domain.

Every corporation incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state for the purpose of operating railroads or railways by electric power, shall have the right to appropriate real estate and other property for right of way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: Provided, that such right of eminent domain shall not be exercised with respect to any public road or street until the location of the electric railroad or railway thereon has been authorized in accordance with section 11082. [L. '03, p. 366, § 2. Cf. L. '99, p. 147, § 1.]

For electric light and power company: See § 5432.

Cited in 42 Wash. 641; 67 Wash. 12, 16.

Under this section a street railway company may condemn land not adjacent to its right of way, for the purpose of developing a water power to create the power of the system, the public being directly interested in such use as a means of acquiring cheap transportation: State ex rel. Harlan v. Centralia etc. Co., 42

Wash. 632, 85 Pac. 344, 7 L. R. A. (N. S.) 198.

Taking of land for street railway as a public use. 22 L. R. A. (N. S.) 134.

Priority of right to land as between conflicting street railway condemnors. 9 Ann. Cas. 690.

§ 11084. [9082.] Right to Lease or Purchase Other Lines.

Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of constructing, owning or operating railroads or railways by electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the electric railroad or electric railway, of any other corporation heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: Provided, that such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases heretofore made or entered into by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [L. '03, p. 366, § 3.]

Lease by electric light or power company: See supra, § 5431.

§ 11085. [9083.] Right of Survey.

Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [L. '99, p. 147, § 2.]

The validity and the present force of this section is doubtful. It refers to electric railways and power transmission lines, but as to the latter, it seems repealed by L. '03, p. 362, § 4. As to electric lines, it may be repealed by L. '03, p. 366, § 4.

Under this section such corporations are thereby vested with legal capacity to prosecute proceedings for the appropri-

tion of private property for a right of way: State ex rel. Smith v. Superior Court, 30 Wash. 219, 70 Pac. 484.

§ 11086. Consolidation of Companies.

With the consent of the majority in interest of their shareholders, two or more corporations operating street railway lines within or in the suburbs of the same municipality, may amalgamate their businesses and properties by consolidation, sale, lease, or other appropriate means, and either by conveyance to a third corporation or one to the other. [L. '17, p. 805, § 1.]

Street Railways. See "Street and Electric Railways."

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TAXATION.

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TAXATION.

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CHAPTER I.

STATE TAX COMMISSIONERS AND TAX INVESTIGATIONS.

§ 11087. State Tax Commissioner to Exercise Powers of State Board.

The [state tax] commissioner shall have power and it shall be his duty to exercise all the powers and perform all the duties now vested in and required to be performed by the state board of tax commissioners. [L. '17, p. 210, § 2.]

See supra, § 10811, duties devolve upon director of taxation.

See supra, § 10893, state tax commissioner abolished.

§ 11088. [9085.] Powers and Duties of Board.

The [tax] commissioners shall have the power, and it shall be their duty:

First.—To have and exercise general supervision of the system of taxation throughout the state.

Second.—To exercise general supervision over assessors and county boards of equalization and the determination and assessment of the taxable property in the several counties, cities and towns of the state, to the end that all taxable property in this state shall be placed upon the assessment-rolls and equalized between persons, corporations and companies in the several counties of this state, and between the different municipalities and counties therein, so that equality of taxation shall be secured according to the provisions of law.

Third.—To take charge of and superintend the enforcement of the direct and collateral inheritance law, and the collection of taxes provided for therein.

Fourth.—To confer with, advise and direct assessors, boards of equalization and county boards of commissioners as to their duties under the law and statutes of the state, and to direct what proceedings, actions or prosecutions shall be instituted to support the law relating to the penalties, liabilities and punishment of public officers, persons, and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment, and taxation of property, and cause complaint to be made against assessors in the proper county for their removal from office for official misconduct or neglect of duty. In the execution of these powers and duties the said board or any member thereof may call upon county attorneys or the attorney general, who shall assist in the commencement and prosecution for penalties and forfeiture, liabilities and punishments for violations of the laws of the state in respect to the assessment and taxation of property.

Fifth.—To prescribe all forms of books and blanks to be used in the assessment and collection of taxes, and to change such forms when prescribed by law, and to recommend to the legislature such changes as may be deemed most economical to the state and counties, and such recommendation shall be accompanied by carefully prepared bill or bills for this end.

Sixth.—The board shall have power to require county, city and town officers to report information as to assessments of property, equalization of taxes, the expenditure of the public fund for all purposes, and other information which said commission may request.

Seventh.—To require individuals, partnerships, companies, associations and corporations to furnish information as to their capital, funded debts, value of property, earnings, taxes and all other facts called for on these subjects, so that the commission may ascertain the relative burdens borne by all kinds and classes of property within the state.

Eighth.—To summon witnesses to appear and testify on the subject of property earnings, taxes, or upon any matter deemed material to the investigation of the system of taxation, and the expenditure of public funds for state, county, district and municipal purposes. Such summons to be served in like manner as a subpoena issued out of the superior court and to be served by the sheriff of the proper county, and such service certified by him to said board without compensation therefor. Persons appearing before said board in obedience to a summons shall in the discretion of the board receive the same compensation as witnesses in the superior court, to be audited by the state auditor on the certificate of said board.

Ninth.—To visit the counties in the state, unless prevented by the necessary official duties, for the investigation of the methods adopted by the county assessors and county boards of commissioners in the assessment and equalization of taxation of real and personal property; to carefully examine into all cases where evasion of property taxation is alleged, and ascertain where existing laws are defective, or improperly or negligently administered.

Tenth.—Any member of the board may administer oaths to witnesses. In case any witness shall fail to obey the summons to appear, or refuse to testify, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars, nor more than one thousand dollars. Any person who shall testify falsely shall be guilty of and punished for perjury.

Eleventh.—The board shall thoroughly investigate all complaints which may be made to it of illegal, unjust or excessive taxation, and shall endeavor to ascertain to what extent and in what manner, if at all, the present system is unequal or oppressive.

Twelfth.—It shall be the duty of the county assessor, on the completion of his assessment-rolls each year, to furnish the tax commission a list of corporations, companies, associations, banks and individuals doing business of a public character whose assessed valuation is three thousand dollars or more, together with the class of property and the valuation placed on same for assessment purposes. [L. '05, p. 225, § 2; L. '07, p. 508, § 1.]

See notes to § 11087, *supra*.

See *supra*, § 1359, duty as to escheats.

See *supra*, § 3842, duty as to license fees of corporations.

See *supra*, § 7797, board of state land commissioners.

See *infra*, § 11160 et seq., assessment of railroads.

See *infra*, § 11173 et seq., privilege tax on private car and express companies.

See *infra*, § 11217, to supervise collection of inheritance tax.

Cited in 90 Wash. 411.

§ 11089. [9086.] To Examine and Test All Assessments.

The board or any member thereof shall examine and test work of county assessors during progress of the assessments, or any time when it is deemed necessary and convenient. Said board or any member thereof shall have all the rights and powers of the assessor for the examination of persons and property and for the discovery of property subject to taxation. If such board shall ascertain that any property is omitted, or not assessed according to law, it shall bring the same to the attention of the county assessor of the proper county, and if the assessor shall neglect or refuse to correct the assessment to conform to law, the said board shall report the fact in writing to the clerk of the board of county commissioners, who shall lay the same before the board of county commissioners for review and examination in said county at a meeting of said board held for the equalization of taxes. The members of the state board of tax commissioners shall be ex-officio members of the state board of equalization and the secretary of the state board of tax commissioners shall be the secretary to the state board of equalization. [L. '05, p. 227, § 3.]

See notes to § 11087.

§ 11090. [9086-1.] County Assessors' Annual Convention.

For the purpose of instruction on the subject of taxation, the county assessors of the state shall meet with the state board of tax commissioners at the capital of the state on the third Monday of January of each year. Each assessor shall be paid by the county of his residence his actual expenses in attending said convention, upon presentation to the county auditor of proper vouchers. [L. '11, p. 46, § 1.]

See notes to § 11087.

§ 11091. [9087.] To Investigate Revenue Laws and Make Report to Legislature.

The state board of tax commissioners shall make diligent investigation concerning the revenue laws and systems of other states and countries, so far as the same may be known by reports and statistics and can be ascertained by correspondence, and with the aid of information thus obtained, together with the experience and observation of our own laws and the operation thereof, recommend to the governor, in a biennial report at least sixty days before the meeting of the legislature, such amendments, changes and modification of our revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenue in the most economical manner. All such recommendations shall be accompanied by suitable bill or bills necessary to carry into effect such recommendations. This report shall also show in tabulated form the whole amount of taxes collected in the state for all purposes, classified as state, county and

municipal, with the sources thereof, the amount lost, the cause of the loss and such other pertinent statistics, matter and information concerning revenue and taxation as may be deemed of public interest. [L. '05, p. 227, § 4.]

See notes to § 11087.

§ 11092. [9088.] Printed Reports to Legislature.

There shall be printed copies of said report, one copy of which shall be sent to each member of the legislature at least twenty days prior to the assembling thereof. [L. '05, p. 228, § 5.]

§ 11093. Investigation—Governor Authorized to Make.

That the governor of the state of Washington be, and he is hereby, empowered to take such steps as he shall deem necessary to properly investigate the entire subject of taxation. [L. '21, p. 667, § 1.]

§ 11094. Assistants.

That he shall employ such expert assistants as he may deem necessary to make a thorough and comprehensive investigation of the entire subject of taxation. [L. '21, p. 667, § 2.]

§ 11095. Report of Investigation.

That he shall make and publish a report of his findings and recommendations regarding the subject of taxation at least six months before the meeting of the next legislature and file his report with the legislature for its information. [L. '21, p. 667, § 3.]

§ 11096. [9090.] Board shall Compile Tax Laws.

The state board of tax commissioners shall compile the laws of this state relating to assessment and collection of taxes, with such annotations, instructions and references to the decisions of the courts concerning the same as they may deem proper. And they shall cause the same to be printed and distributed to the several county assessors, deputy county assessors, county attorneys, county commissioners, in the state, and to such other officers and persons as may request the same, such printing to be borne by the public printing fund. [L. '07, p. 511, § 3.]

See notes to § 11087.

CHAPTER II.

DEFINITIONS AND EXEMPTIONS.

§ 11097. [9091.] Property Subject to Taxation.

All real and personal property now existing, or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation for the support of the state government, and for county, school, municipal, or such other purposes as shall be designated by law, upon equalized valuations thereof, fixed with reference thereto on the first day of March at 12 o'clock meridian, in each and every year in which the same shall be listed, except such property as shall be expressly

exempted therefrom by the provisions of law. [Cf. L. '93, p. 323, § 1; L. '97, p. 136, § 1.]

Compare L. '54, pp. 330—338; L. '59, p. 19 (county orders received in payment of taxes); L. '63, pp. 450—456; L. '64, pp. 31—45; L. '65, pp. 3—9; L. '67, pp. 59—73; L. '68, p. 62; L. '69, pp. 176—197; L. '71, pp. 36—51; L. '75, pp. 59—75; L. '77, pp. 154—173; L. '79, pp. 3—49; Cd. '81, §§ 2829—2969; L. '86, pp. 47—53 and pp. 89—95; L. '88, pp. 192—195; L. '90, pp. 530—592; L. '91, pp. 280—326; 1 H. C., §§ 1018—1140.

See Art. VII, § 1, of the Const., property liable to taxation, exception.

See Art. VII, § 2, of the Const., uniformity and equality of taxation guaranteed.

See Const., Art. VII, § 3, assessment of corporate property.

Cited in 3 Wash. 299, 301; 5 Wash. 90, 91; 6 Wash. 64, 70, 220, 221, 373; 7 Wash. 95, 102, 106; 8 Wash. 90, 95; 9 Wash. 612; 11 Wash. 697; 12 Wash. 13, 72, 109; 14 Wash. 265, 345; 19 Wash. 656; 20 Wash. 158, 521; 21 Wash. 54; 25 Wash. 645; 26 Wash. 361; 27 Wash. 97; 28 Wash. 85; 29 Wash. 164, 165; 33 Wash. 12; 38 Wash. 260; 75 Wash. 79; 106 Wash. 106.

Nature and Source of Taxing Power:

See Remington's Digest, Tax., § 1; Puget Sound Agricultural Co. v. Pierce County, 1 W. T. 159; State ex rel. Board of Commissioners of Pierce County v. Clausen, 95 Wash. 214, 163 Pac. 744.

There is no implied power in counties to levy taxes, but the same exists only by express statutory authorization: Great Northern Ry. Co. v. Stevens County, 108 Wash. 238, 183 Pac. 65.

The diversion of funds levied for county roads under the budget system to other roads not included in the estimates does not avoid the tax: Spokane, Portland & Seattle R. Co. v. Franklin County, 106 Wash. 21, 179 Pac. 230.

Public purpose—Land Development Act: State ex rel. Reclamation Board v. Clausen, 110 Wash. 525, 188 Pac. 538.

Power of Legislature in General: See Remington's Digest, Tax., § 4; Frederick v. Seattle, 13 Wash. 428, 43 Pac. 364; Bellingham Bay Imp. Co. v. New Whatcom, 20 Wash. 53, 54 Pac. 774; Stull v. De Mattos, 23 Wash. 71, 62 Pac. 451, 51 L. R. A. 892.

Power of state—Indians—Personal property: Olney v. McNair, 105 Wash. 18, 177 Pac. 641.

Restriction as to Purposes of Taxation: See Remington's Digest, Tax., § 5; Mason v. Purdy, 11 Wash. 591, 40 Pac. 130; Bilger v. State, 63 Wash. 457, 116 Pac. 19.

Purposes—Moral obligation—Public purpose of tax: State ex rel. Hart v. Clausen, 113 Wash. 570, 194 Pac. 793.

Ownership or Possession of Property, and Persons to Whom Taxable: See Remington's Digest, Tax., §§ 18—20. **Ownership in General:** Whatcom County v. Fairhaven Land Co., 7 Wash. 101, 34 Pac. 563; State ex rel. Hellar v. Jackson, 82 Wash. 351, 144 Pac. 48.

§ 19. — **Equitable Estates or Interests in General:** Puget Sound Agr. Co. v. Pierce County, 1 W. T. 159; Washington Iron Works v. King County, 20 Wash. 150, 54 Pac. 1004.

§ 20. — **Property Held in Trust or Other Fiduciary Capacity:** Hewitt v. Traders' Bank, 18 Wash. 326, 51 Pac. 468; Bramel v. Manring, 18 Wash. 421, 51 Pac. 1050.

Oil and gas rights or privileges as independent subject of taxation, or as tangible property for purposes of taxation. 16 A. L. R. 513.

Taxation of insurance reserves. 13 A. L. R. 186.

§ 11098. [9092.] Realty Defined.

Real property for the purposes of taxation shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind, thereon, and all rights and privileges thereto belonging, or in anywise appertaining, and all quarries and fossils in and under the same, which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, for the purposes of taxation. [L. '93, p. 323, § 2; L. '97, p. 136, § 2.]

Cited in 21 Wash. 54; 23 Wash. 370; 43 Wash. 526; 44 Wash. 469; 69 Wash. 322; 84 Wash. 73; 96 Wash. 9; 97 Wash. 543.

§ 11099. [9093.] Personalty Defined.

Personal property for the purpose of taxation, shall be construed to embrace and include, without especially defining and enumerating it, all goods, chattels, stocks or estates; all improvements upon lands, the fee of which is still vested in the United States, or in the state of Washington, or in any railroad company or corporation, and all and singular of whatsoever kind, name, nature and description, which the law may define or the courts interpret, declare and hold to be personal property, for the purpose of taxation, and as being subject to the laws and under the jurisdiction of the courts of this state, whether the same be any marine craft, as ships and vessels, or other property holden under the laws and jurisdiction of the courts of this state, be the same at home or abroad: Provided, that the ships or vessels registered in any custom-house of the United States within this state, which ships or vessels are used exclusively in trade between this state and any of the islands, districts, territories, states of the United States, or foreign countries, shall not be listed for the purpose of or subject to taxation in this state, such vessels not being deemed property within this state: Provided, that mortgages, notes, accounts, moneys, certificates of deposit, tax certificates, judgments, state, county, municipal and school district bonds and warrants shall not be considered as property for the purpose of this chapter, and no deduction shall hereafter be allowed on account of an indebtedness owed. [L. '07, p. 69, § 1. Cf. '93, p. 323, § 3; L. '95, p. 508, § 1; L. '97, p. 136, § 3; L. '01, Ex. Sess., p. 3, § 1.]

"This chapter" refers to the general revenue act of 1893 and the subsequent amendatory acts, embraced in several chapters of this title, as appears from the historical references. Other acts included are distinguished by notes.

See *infra*, § 11148, improvements on public lands.

See *infra*, § 11195, of telegraph and telephone companies.

Cited in 14 Wash. 588; 18 Wash. 253, 277; 20 Wash. 159; 21 Wash. 500; 23 Wash. 370; 25 Wash. 613; 50 Wash. 171, 177; 85 Wash. 627.

Personal Property in General — Abstract Books: See Remington's Digest, Tax., § 17; Booth & Hanford Abstract Co. v. Phelps, 8 Wash. 549, 36 Pac. 489, 40 Am. St. Rep. 921, 23 L. R. A. 864.

Double Taxation: See Remington's Digest, Tax., § 11; Heath v. McCrea, 20 Wash. 342, 55 Pac. 432; Pacific National Bank v. Pierce County, 20 Wash. 675, 56 Pac. 936; Ridpath v. Spokane County, 23 Wash. 436, 63 Pac. 261; Lewiston Water & P. Co. v. Asotin County, 24 Wash. 371, 64 Pac. 544; Hammond Lumber Co. v. Cowlitz County, 84 Wash. 462, 147 Pac. 19.

"Credits" are not property and this section exempting the same is valid: State ex rel. Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707.

Mortgages, accounts, certificates of deposit, judgments, state, county and municipal bonds and warrants, may all be classed as "credits" in the listing of

property for taxation, but "moneys" cannot be so classed: State ex rel. Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707.

Deduction of Indebtedness: See Remington's Digest, Tax., §§ 62, 63; Newport v. Mudgett, 18 Wash. 271, 51 Pac. 466; Barnes v. Flummerfelt, 21 Wash. 498, 57 Pac. 575.

This section is unconstitutional in so far as it exempts from taxation ships or vessels whose situs is within this state, when they are used exclusively in trade between this state and other states and territories of the United States, or foreign countries: Pacific Cold Storage Co. v. Pierce County, 85 Wash. 626, 149 Pac. 34.

This section, exempting "moneys" from taxation, violates the constitutional requirement that all property be taxed: State ex rel. Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707.

The unconstitutionality of this section in so far as it exempts moneys from taxation does not affect the constitutionality of its other provisions exempting credits:

State ex rel. Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707.

Exemption of mortgages from taxation as including conditional sale contracts or title retaining notes given in respect of them. 12 A. L. R. 566.

What constitutes residence in jurisdiction within personal property

tax statute. Ann. Cas. 1917B, 726, 780.

Taxation as personalty of debts owing by solvent debtors. 2 Ann. Cas. 754.

When nonresident's tangible personalty temporarily in state taxable as not being in transit. 10 Ann. Cas. 65; 2 L. R. A. (N. S.) 662.

§ 11100. [9094.] Leases Taxed as Personal Property.

For the purposes of assessment and taxation all leases of real property and leasehold interests therein for a term less than the life of the holder, shall be and the same are hereby declared to be personal property. [L. '07, p. 206, § 1.]

This and the next two sections were not originally part of this chapter.

Cited in 62 Wash. 410; 64 Wash. 617.

Where a leasehold interest in state lands is subject to a bonded indebtedness against improvements which revert to the state, so that it has no real market value, its valuation for the purposes of taxation must be measured by both its burdens and its benefits; and an assessment based on gross income or benefits alone is excessive: Metropolitan Building Co. v. King County, 72 Wash. 47, 129 Pac. 883.

A lease of a railroad right of way and line for nine hundred and ninety-nine years would not constitute the lessee an owner of the land or of an interest in the railway, since the ownership of the fee still inheres in the lessor (although the period of the term substantially amounts to a grant in perpetuity): State ex rel. Hellar v. Jackson, 82 Wash. 351, 144 Pac. 48.

§ 11101. [9095.] Standing Timber—Personalty.

Standing timber owned separately from the ownership of the land upon which the same may stand or be growing, for the purposes of assessment and taxation shall be considered and is hereby declared to be personal property. [L. '07, p. 206, § 2.]

Cited in 79 Wash. 339; 97 Wash. 542.

§ 11102. [9096.] Lumber and Saw-logs—Where Taxed.

Lumber and saw-logs shall be assessed and taxed in the county and assessment district where the same may be situated on the first day of March of the assessment year. [L. '07, p. 206, § 3.]

§ 11103. [9097.] Definition of Terms.

The term "money" or "moneys," wherever used in this chapter, shall be held to mean gold and silver coin, gold and silver certificates, treasury notes, United States notes, bank notes, and every deposit which any person owning the same or holding in trust, and residing in this state, is entitled to withdraw in money. The term "tract" or "lot," and "piece or parcel of real property," and "piece or parcel of lands," wherever used in this chapter, shall each be held to mean any contiguous quantity of land in the possession of, owned by, or recorded as the property of the same claimant, person or company. Every word importing the singular number only may be extended to or embrace the plural number, and every word importing the plural number may be applied and limited to the singular number, and every word importing the mas-

culine gender only may be extended and applied to females as well as males. Whenever the word "oath" is used in this chapter, it may be held to mean affirmation, and the word "swear" in this chapter may be held to mean affirm. The term "person," wherever used in this chapter, shall be construed to include firm, company, association or corporation. The words "county auditor," when used in this chapter, shall be construed to mean register or recorder, whenever it shall be necessary to use the same to the proper construction of this chapter. The word "householder" shall be taken to mean and include every person, married or single, who resides within the state of Washington being the owner or holder of an estate, or having a house or place of abode, either as owner or lessee. [L. '93, p. 324, § 4; L. '97, p. 137, § 4.]

"This chapter": See note to § 11099.

See supra, § 11099, and notes, as to "credits" and "moneys."

Meaning of term "similar property" in statute relating to taxation. 18 Ann. Cas. 784; 17 A. L. R. 101.

§ 11104. [9098.] Exemptions.

All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First. All lands used exclusively for public burying grounds or cemeteries, all churches built and supported by donations whose seats are free to all, and the grounds whereon such churches are built, not exceeding one hundred and twenty feet by two hundred feet in quantity, together with a parsonage; Provided, that in any case the area exempted shall include all ground covered by such churches and parsonages and the structures and ground necessary for street access, light and ventilation, but the area of unoccupied ground exempted in connection with both church and parsonage under this proviso shall not exceed the equivalent of one hundred and twenty by one hundred and twenty feet. The parsonage need not be on land contiguous to the church property if the total area exempted does not exceed the area above designated: Provided, that such grounds are used wholly for church purposes and not otherwise; also the property of other nonsectarian organizations or associations, organized and conducted primarily and chiefly for religious purposes and not for profit, which shall be wholly used, or to the extent solely used for the religious purposes of such associations, or for the educational, benevolent, protective or social departments growing out of, or related to, the religious work of such associations: Provided such purposes are for the general public good and such properties are devoted to the general public benefit; also all art, scientific or historical collections of associations, maintaining and exhibiting such collections for the benefit of the general public and not for profit.

Second. All property, whether real or personal, belonging exclusively to any school district, county, municipal corporation, the state, or to the United States.

Third. All fire-engines and other implements used for the extinguishment of fires, with the building used exclusively for the safekeeping thereof, and for the meetings of fire companies, providing that such belongs to any town or fire company organized therein.

Fourth. All free public libraries, orphanages, orphan asylums, institutions for the reformation of fallen women, homes for the aged and infirm, and hospitals for the care of the sick, when such institutions are supported in whole or in part by the public donations or private charity, and all of the income and profits of such institutions are devoted, after paying the expenses thereof, to the purposes of such institutions, and the grounds, whenever such libraries, orphanages, institutions, homes and hospitals are built and when used exclusively and not otherwise for the purposes in this subdivision enumerated. In order to determine whether such libraries, orphanages, institutions, homes and hospitals are exempt from taxes, within the true intent of this chapter, the state board of health, the county and city authorities of the county and city wherein such institutions are respectively situated, shall have access to the books of such institutions, and the institution claiming exemption shall provide by its articles of incorporation that the mayor of the city and the chairman of the board of county commissioners wherein such institution is located shall be ex-officio trustees thereof, and shall be notified of each and every meeting thereof, and shall have the same powers as a trustee of such institution. And the superintendent or manager of the library, orphanage, institution, home or hospital claiming exemption from taxation under this chapter shall make oath before the assessor that the income and the receipts thereof including donations to it, have been applied to the actual expenses of maintaining it, and to no other purpose. He shall also, under oath make annual report to the state board of health of its receipts and disbursements, specifying in detail the sources from which the receipts have been derived and the object to which disbursements have been applied, and shall furnish in the said report full and complete vital statistics for the use and information of the state board of health, who may publish the same in its annual report.

Fifth. All ships, vessels and boats in actual construction and all materials, especially designed and set apart for the construction of any such ship, vessel or boat in process of building within this state, shall be exempt from taxation.

Sixth. The personal property of each head of a family or widow liable to assessment and taxation of which such individual is the actual and bona fide owner to an amount of three hundred dollars; Provided, that each person shall list all of his personal property for taxation and the county assessor shall deduct the amount of the exemption authorized by this section from the total amount of the assessment and assess the remainder. The property owned by humane societies in this state in actual use by such societies not exceeding ten thousand dollars in taxable value owned by any society. [L. '15, p. 358, § 1. Cf. L. '03, p. 379, § 1; L. '93, p. 325, § 5; L. '95, p. 509, § 2; L. '97, p. 138, § 5; L. '99, p. 285, § 2; L. '01, p. 367, § 1. Cf. L. '13, p. 351, § 1.]

"This chapter": See note to § 11099.

See supra, §§ 3760, 3763, 3766, 3768, cemetery lands, when exempt.

See supra, § 3732, stock of building and loan associations.

See supra, § 8007, harbor area improvements, when exempt.

See supra, § 8109, state lands ceded to United States, when exempt.

See infra, § 11218, exemption of charitable bequests from inheritance tax.

Cited in 17 Wash. 112; 59 Wash. 45; 67 Wash. 282; 71 Wash. 322; 89 Wash. 497; 90 Wash. 411; 109 Wash. 51.

EXEMPTIONS: See Remington's Digest, Tax., §§ 38—44.

§ 38. Power to Exempt—Effect of Requirement of Equality and Uniformity: Puget Sound Agr. Co. v. Pierce County, 1 W. T. 159; State ex rel. Chamberlain v. Daniel, 17 Wash. 111, 49 Pac. 243; Pacific National Bank v. Pierce Co., 20 Wash. 675, 56 Pac. 936; State ex rel. Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707.

§ 40. Presumptions as to Existence of Exemptions: Trimble v. Seattle, 64 Wash. 102, 116 Pac. 647.

§ 41. Construction and Operation of Exemptions in General: Thurston County v. Sisters of Charity, 14 Wash. 264, 44 Pac. 252; State ex rel. Board of Tax Commrs. v. Cameron, 90 Wash. 407, 156 Pac. 537.

Railroads: See Remington's Digest, Tax., §§ 31, 32. **Earnings and Receipts:** Columbia & P. S. R. Co. v. Chilberg, 6 Wash. 612, 34 Pac. 163.

Rolling Stock and Operating Property: Northern Pac. R. Co. v. State, 84 Wash. 510, 147 Pac. 45, Ann. Cas. 1916E, 1166; Canadian Pac. R. Co. v. King County, 90 Wash. 38, 155 Pac. 416.

§ 42. Railroad Companies and Property: Columbia etc. R. Co. v. Chilberg, 6 Wash. 612, 34 Pac. 163.

A personal property assessment and tax sale of a logging company's "railroad" and equipment is not void as embracing real estate, where the railroad referred to was upon leased land: J. K. Lumber Co. v. Ash, 104 Wash. 388, 176 Pac. 550.

§ 43. Charitable or Benevolent Institutions, and Property Used for Charitable Purposes: Thurston County v. Sisters of Charity, 14 Wash. 264, 44 Pac. 252.

§ 44. Religious Societies and Property Used for Religious Purposes: Foley v. Oberlin Congregational Church, 67 Wash. 280, 121 Pac. 65.

3 Rem. & Bal. Code, § 9098, exempting from taxation all property of Young Men's Christian Associations which shall be wholly used, or to the extent solely used, for religious purposes, was special legislation and in contravention of Constitution, Article VII, section 2, requiring the legislature to prescribe by general law such regulations as shall secure a

just valuation for taxation of all property; because it excludes from its operation the property of other organizations which may be devoted to religious purposes: Young Men's Christian Assn. v. Parish, 89 Wash. 495, 154 Pac. 785, L. R. A. 1916D, 272.

This section exempting from general taxation all lands used exclusively for burying grounds or cemeteries, does not exempt such lands from assessments for local improvements: Sixth Avenue West, Seattle, In re, 59 Wash. 41, 109 Pac. 1052, Ann. Cas. 1912A, 1047.

Construction of exemption of religious body or society from taxation or special assessment. 17 A. L. R. 1027.

What is included in exemption of religious institution from taxation. Ann. Cas. 1912A, 354; Ann. Cas. 1918B, 532.

Prospective use for religious or charitable purpose as rendering property exempt from taxation. 2 A. L. R. 545.

Exemption of parsonage or residence of minister or priest. 11 Ann. Cas. 1102; 13 A. L. R. 1196; 27 L. R. A. (N. S.) 910; 39 L. R. A. (N. S.) 437.

Effect of using property of a religious, charitable or educational institution in secular business or for revenue, on its right to exemption from taxation. 19 L. R. A. 289; 50 L. R. A. (N. S.) 1197.

Fraternal benefit society as exempt as charitable or benevolent institution. 7 Ann. Cas. 39; 7 L. R. A. (N. S.) 380.

Masonic or Elks' lodge as charitable institution exempt from taxation. Ann. Cas. 1912A, 1187; Ann. Cas. 1914C, 958; Ann. Cas. 1916E, 786; Ann. Cas. 1918E, 1043.

Taxation of property owned by public body but not devoted to public use. 3 A. L. R. 1439.

Exemption of lands owned by governmental bodies or in which they have an interest. 132 Am. St. Rep. 291.

Necessity of acceptance of dedicated street to relieve it from taxation. 5 A. L. R. 1537.

Irrigation district as municipality within tax exemption laws. 17 A. L. R. 81.

§ 11105. [9099.] Property of Schools and Colleges Exempt.

There shall be exempt from taxation in the state of Washington all property, real and personal, owned by any school or college in this

state, supported in whole or in part by gifts, endowments or charity, the entire income of which said school or college, after paying the expenses thereof, is devoted to the purposes of such institution, and which is open to all persons upon equal terms: Provided, that said property is used solely for educational purposes (or the revenue therefrom be devoted exclusively to the support and maintenance of such institution): And provided, further, that the real estate so exempt shall not exceed ten acres in extent, and shall be used exclusively for college or campus purposes: Except, however, that any school of collegiate grade and accredited by the state board of education shall be entitled to an exemption of not more than forty acres of real estate used exclusively for said purposes, but no corporation shall be entitled to more than one such larger exemption, and where the college is under the direction or control of any religious denomination such larger exemption shall be allowed to one college only directed or controlled by such religious denomination: And provided, further, that real estate owned or controlled by such institution and leased or rented by them for the purpose of deriving revenue therefrom shall not be exempt from taxation under the provisions of this act: Provided, further, that the annual income from such endowment is equal to or exceeds all incomes from tuitions received by said institutions. [L. '15, p. 403, § 1. Cf. L. '03, p. 388, § 1.]

"This act," this and the next two sections.

See supra, § 4588, lands leased for experimental station, when exempt.

§ 11106. [9099-1.] No Exemption from Local Assessments.

Nothing in this act will exempt such property from payment of local assessment for improvements made or hereafter to be made. [L. '15, p. 404, § 2.]

§ 11107. [9099-2.] Filing Claim of Exemption.

Any such institution claiming said exemption shall file such claim with the county auditor of the county where such property is located and also with the secretary of state. [L. '15, p. 404, § 3.]

§ 11108. [9100.] Sworn Statement to be Filed With Assessor.

Before any exemption provided for by this act shall be allowed for any year, the institution claiming such exemption shall file with the county assessor of the county wherein such property is situated and subject to taxation, on or before the first day of March in each year, a statement verified by the oath of the president, treasurer, or other proper officer of such institution, containing a list of all property claimed to be exempt, the purpose for which the same is used, the revenue derived from the same for the preceding year, the use to which such revenue was applied, the number of students in attendance at such school or college, and the total revenues of the same with the source from which the same was derived, and the purposes to which such revenues were applied, giving the items of such revenues and expenditures in detail. The county assessor of the county wherein such property is subject to taxation and such exemption is claimed, shall at all times have access

to the books and records of such institution in order to determine whether any property claimed to be exempt from taxation should be exempted under the provisions of this act. [L. '03, p. 389, § 2.]

"Act" in this section refers to §§ 11105, 11108.

CHAPTER III.

LISTING AND ASSESSMENT OF PROPERTY.

In cities: See chapters XIV and XV, §§ 11318—11337.

§ 11109. [9101.] Realty Listed Biennially—Personalty Annually.

All real property in this state subject to taxation shall be listed and assessed under the provisions of this chapter in the year 1900 and biennially thereafter on every even-numbered year, with reference to its value on the first day of March preceding the assessment. All personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the first day of March preceding the assessment: Provided, that the assessed value of all real property in this state as fixed by the assessment of 1897 shall be the assessed value until the year 1900: Provided further, that real estate becoming subject to taxation since the last assessment, and improvements upon real estate made since the last assessment, shall be assessed and included in the assessment list and tax-roll in every odd-numbered year: And provided further, that the destruction or removal of improvements since the last preceding assessment shall be duly noted by the county assessor, and the assessment and tax-rolls herein provided made to conform to such changes: Provided further, that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessment list, and in each odd-numbered year the valuation of each tract for taxation shall be the same as the valuation thereof as equalized by the county board of equalization in the preceding year. [L. '93, p. 326, § 6; L. '95, p. 501, § 3; L. '97, p. 140, § 6.]

"This chapter": See note to § 11099.

Cited in 4 Wash. 325; 16 Wash. 370; 27 Wash. 97; 29 Wash. 165; 91 Wash. 515, 657, 658; 98 Wash. 4; 109 Wash. 51.

A judgment correcting an excessive valuation for an even-numbered year and fixing the correct valuation becomes the assessed valuation for the following year, and is final and binding upon the board of equalization, under this section, providing that the assessed valuation of real property for taxation in even-numbered years shall remain the assessment in odd-numbered years, where there are no

changed conditions: *Simpson Logging Co. v. Chehalis County*, 91 Wash. 656, 158 Pac. 342.

LEVY AND ASSESSMENT—Statutory Provisions: See *Remington's Digest*, Tax., § 55; *Heilig v. City Council of Puyallup*, 7 Wash. 29, 34 Pac. 164; *Woodward v. Taylor*, 33 Wash. 1, 73 Pac. 785, 75 Pac. 646; *Nathan v. Spokane County*, 35 Wash. 26, 76 Pac. 521, 102 Am. St. Rep. 888, 65 L. R. A. 336; *Northern Pac. R. Co. v. State*, 84 Wash. 510, 147 Pac. 45, Ann. Cas. 1916E, 1166.

§ 11110. [9102.] Assessor shall Begin Work, When.

The assessor shall begin the preliminary work for each assessment not later than the first day of February of each year in all counties from the first to the sixteenth class, inclusive, and not later than the first day of March in all other counties in the state. He shall also complete the duties of listing and placing valuations on all property by May 31st

of each even-numbered year, and in the following manner, to wit: He shall actually determine as nearly as practicable the true and fair value of each tract or lot of real property listed for taxation and shall enter the value thereof, including the value of all improvements and structures thereon, opposite each description of property. He shall make an alphabetical list of the names of all persons in his county liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the prescribed form, which statement and list shall be subscribed and sworn to by the person listing the property, and the assessor shall thereupon determine the value of the property included in such statement and enter the same in assessment-books opposite the name of the party assessed; and in making such entry in his assessment list, he shall give the name and postoffice address of the party listing the property, and if the party reside in a city the assessor shall give the street and number or other brief description of his residence or place of business. [Cf. L. '93, p. 342, § 48; L. '95, p. 512, § 5; L. '97, p. 157, § 46.]

Cited in 11 Wash. 698; 33 Wash. 6, 7; 84 Wash. 465, 528, 537.

§ 11111. [9102½.] Lists, How Secured.

The assessor shall call at the office, place of doing business or residence of each person required by this chapter to list property, and list his name, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this chapter; and every person so required shall enter a true and correct statement of such property in the form prescribed, which statement shall be signed and verified by the oath of the person listing the property, and shall deliver to the assessor, who shall thereupon assess the value of such property and enter the same in his books: Provided, if any property is listed or assessed on or after the fourth Monday of May, and before the return of the assessor's books, the same shall be legal and binding as if listed and assessed before that time: Provided further, that if from any reason the assessor shall fail to visit any such person, firm or corporation, said failure shall not impair or invalidate such assessment. [Cf. L. '93, p. 343, § 49; L. '97, p. 158, § 47.]

"This chapter": See note to § 11099.

See *infra*, § 11272, and notes, when lien attaches.

Cited in 42 Wash. 303; 100 Wash. 27.

In view of this and other sections, the county commissioners have no power to employ experts to locate coal lands for

tax assessment purposes: *Northwestern Improvement Co. v. McNeil*, 100 Wash. 22, 170 Pac. 338.

§ 11112. [9103.] Assessor shall List Omitted Property.

The assessor, upon his own motion, or upon the application of any taxpayer, shall enter in the detail and assessment list of the current year, any property shown to have been omitted from the assessment list of any preceding year, at the valuation of that year, or if not then valued, at such valuation as the assessors shall determine from the preceding

year, and such valuation shall be stated in a separate line from the valuation of the current year. [L. '97, p. 158, § 48.]

"This chapter": See note to § 11099.

Addition of Persons or Property Omitted: See Remington's Digest, Tax., § 64; Phillips v. Thurston County, 35 Wash. 187, 76 Pac. 993.

Right of taxpayer to notice and opportunity to be heard on assess-

ment for taxation. 12 Ann. Cas. 468.

Assessment, after death of owner, of taxes omitted during his lifetime. 40 L. R. A. (N. S.) 927.

§ 11113. [9104.] List of Sick or Absent Persons.

If any person required by this chapter to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, or usual place of residence or business of each person, a written or printed notice requiring such person to make out and leave at the place named by said assessor, on or before some convenient day named therein, the statement or list required by this chapter. The date of leaving such notice and the name of the person required to list the property, shall be noted by the assessor in his assessment book. [L. '93, p. 344, § 50; L. '97, p. 158, § 49.]

§ 11114. [9105.] Return "Refusal to List," etc.

In every case where any person whose duty it is to list personal property for taxation has refused or neglected to list the same when called on by the assessor for that purpose, or to take and subscribe an oath in regard to the truth of his statement of personal property, or any part thereof, when required by the assessor, the assessor shall enter opposite the name of such person, in an appropriate column, the words "refused to list," or "refused to swear," as the case may be; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the assessor shall list the property of such person and enter opposite the name of such person, in an appropriate column, the words "absent or sick." The assessor is hereby authorized to administer oaths to all persons who, by the provisions of this chapter are required to swear, or whom he may require to testify in any case, and he may examine upon oath any person whom he may suppose to have knowledge of the amount or value of the personal property of any person refusing to list or to verify his list of personal property. The assessor shall report to the county board of equalization all cases where the owner or agent of property assessed was, at the time of assessment, either absent or sick, or refused to make a sworn statement in reference thereto. [L. '93, p. 344, § 51; L. '97, p. 159, § 50.]

"This chapter": See note to § 11099.

Cited in 100 Wash. 27.

§ 11115. [9106.] School and Road Districts to be Entered in Roll.

It shall be the duty of assessors, when assessing real or personal property, to designate the number of the school district and road district in which each person and each description of property assessed is

liable for tax, which designation shall be made by writing the number of the districts opposite each assessment, in a column provided for that purpose in the detail and assessment list. When the real and personal property of any person is assessable in several school districts and road districts, the amount in each shall be assessed on separate detail and assessment lists, and all property assessable in incorporated cities shall be assessed in consecutive books, where more than one book is necessary, and separate from outside property and separately, and the name of the owner, if known, together with his postoffice address, placed opposite each amount. [L. '93, p. 344, § 52; L. '97, p. 159, § 51.]

§ 11116. [9107.] Map of School and Road Districts.

The county commissioners of each county shall furnish the assessor with a map of the county, showing the boundaries of each road and school district therein numbered. And the board of county commissioners, in fixing, changing or revising the boundaries of any road district or districts, shall, wherever practicable, make the boundaries of such district or districts conform to the boundaries of the school district nearest coincident thereto, to the end that the several school and road districts in each county shall correspond in territory one with the other: Provided, that any road district may include more than one school district. [Cf. L. '93, p. 345, § 53; L. '97, p. 160, § 52.]

See supra, § 6472, establishment of road districts.

Cited in 3 Wash. 157.

§ 11117. [9108.] Failure to Obtain List of Personalty.

In all cases of a failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property and assess the same at such amount as he believes to be the true value thereof. The assessor, when requested, shall deliver to the person assessed a copy of the statement of property hereinbefore required, showing the valuation of the property so listed, which copy shall be signed by the assessor. [L. '93, p. 345, § 54; L. '97, p. 160, § 53.]

§ 11118. [9109.] Footings of Lists.

The assessor shall add up and note the amount of each column in his detail and assessment lists, which he shall have bound in book form. He shall also make, under proper headings, a tabular statement showing the footings of the several columns upon each page, and shall add and set down under the respective headings the total amounts of each column, which he shall attach to the highest numbered assessment-book, and on or before the first Monday in August he shall file the same, properly indexed, with the clerk of the county board of equalization for the purpose of equalization by the said board. Such returns shall be verified by his affidavit, substantially in the following form:—

State of Washington, }
 — County, } ss.

I, —, assessor of —, do solemnly swear that the books No. 1 to No. —, to the last of which this is attached, contain a correct and full list of all the real property (or personal property, as the case may be) subject to taxation in — county, so far as I have been able to ascertain the same; and that the assessed value set down in the proper column, opposite the several kinds and descriptions of property, is in each case the true and fair value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said books, and the tabular statement returned herewith, are correct, as I verily believe.

— —, Assessor.

Subscribed and sworn to before me this — day of —, 18—.

[L. S.]

— —,
 Auditor of — County:

Provided, that the failure of the assessor to attach his certificate shall in nowise invalidate the assessment. After the same has been duly equalized by the county and state board of equalization, the same shall be delivered to the county auditor, who shall then extend the amount as levied by the state and county boards upon the said detail and assessment lists as by law provided. [L. '93, p. 345, § 55; L. '97, p. 160, § 54.]

Cited in 19 Wash. 317; 20 Wash. 160; 29 Wash. 170.

§ 11119. [9110.] Parties may Return Lists to Auditor, When.

If any person required to list property for taxation is prevented by sickness or absence from giving to the assessor such statement, such person or his agent having charge of such property, may, at any time before the close of the session of the board of equalization, make out and deliver to said board a statement of the same as required by this chapter, and the board shall, in such case, make an entry thereof, and correct the corresponding item or items in the return made by the assessor, as the case may require; but no such statement shall be received by the said board from any person who refused or neglected to make oath to his statement when required by the assessor as provided herein; nor from any person unless he makes and files with the said board an affidavit that he was absent from his county, without design to avoid the listing of his property, or was prevented by sickness from giving the assessor the required statement when called on for that purpose. [L. '93, p. 346, § 56; L. '97, p. 161, § 55.]

"This chapter": See note to § 11099.

§ 11120. [9111.] Addition of Omitted Property.

The county auditor shall carefully examine the assessment-books when returned to him by the assessor, and if he discovers that the assessment of any property has been omitted, shall enter the same upon the proper list and forthwith notify the assessor making such omission, who shall immediately proceed to ascertain the value thereof and correct

his original return; in case of the inability or neglect of the assessor to perform his duty, the auditor shall ascertain the value of such property and make the necessary corrections. [L. '93, p. 346, § 57; L. '97, p. 161, § 56.]

Cited in 29 Wash. 170.

§ 11121. [9112.*]—Assessment upon Fifty Per Cent of True Value.

All property shall be assessed fifty per cent of its true and fair value in money. In determining the true and fair value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt as a criterion of value the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such time or price as he believes the same to be fairly worth in money at the time such assessment is made. The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor. In assessing any tract or lot of real property, the value of the land, exclusive of improvements, shall be determined; also, the value of all improvements and structures thereon and the aggregate value of the property, including all structures and other improvements, excluding the value of crops growing on cultivated lands. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash. Taxable leasehold estates shall be valued at such a price as they would bring at a fair, voluntary sale for cash. [L. '19, p. 393, § 4; L. '13, p. 438, § 1. Cf. L. '93, p. 341, § 44; L. '97, p. 155, § 42.]

See *infra*, § 11219, and notes, equalization of assessments.

Cited in 28 Wash. 258; 29 Wash. 170; 43 Wash. 526; 68 Wash. 625; 75 Wash. 86, 89; 84 Wash. 73, 528, 536; 86 Wash. 486; 87 Wash. 60; 90 Wash. 410; 93 Wash. 96; 95 Wash. 133; 97 Wash. 537; 106 Wash. 98, 101; 113 Wash. 528.

Nature of Property in General: See Remington's Digest, Tax., § 57; Doe v. Tenino Coal and Iron Co., 43 Wash. 523, 86 Pac. 938; France v. Deep River Logging Co., 79 Wash. 336, 140 Pac. 361, Ann. Cas. 1916A, 238.

Valuation of Real Property: See Remington's Digest, Tax., § 59; Eureka District Gold Mining Co. v. Ferry County, 28 Wash. 250, 68 Pac. 727; Doty Lumber & Shingle Co. v. Lewis County, 60 Wash. 428, 111 Pac. 562, Ann. Cas. 1912B, 870; Pasco Reclamation Co. v. Franklin County, 98 Wash. 495, 167 Pac. 1094.

An assessment of coal lands at from five dollars to fifteen dollars per acre for coal values is not void as arbitrary and without the exercise of discretion, where the deputy making the assessment made

an investigation on the land and based his judgment thereon and on information gained from coal owners, miners and prospectors: Washington Union Coal Co. v. Thurston County, 105 Wash. 208, 177 Pac. 744, 2 A. L. R. 1546.

Coal mining property surrounding a proven mine may be given an assessed valuation as such where there is reason to find and believe that it has coal values: Washington Union Coal Co. v. Thurston County, 105 Wash. 208, 177 Pac. 744, 2 A. L. R. 1546.

An assessment for taxation is so excessive as to be constructively fraudulent, where like property on four sides was assessed only one-fourth to one-seventh as much, and the assessor employed a minimum rate without considering the fair market value, which other evidence showed was only one-fifth as much as the assessment: Titlow v. Pierce County, 108 Wash. 633, 185 Pac. 575.

Valuation of Personal Property in General: See Remington's Digest, Tax., § 60;

Metropolitan Bldg. Co. v. King County, 62 Wash. 409, 113 Pac. 1114, Ann. Cas. 1912C, 943; **National Lumber & Mfg. Co. v. Chehalis County**, 86 Wash. 483, 150 Pac. 1164.

Taxation According to Value: See Remington's Digest, Tax., § 12; **Eureka District Gold Mining Co. v. Ferry County**, 28 Wash. 250, 68 Pac. 727; **State ex rel. Board of Tax Commrs. v. Cameron**, 90 Wash. 407, 156 Pac. 537.

Where the assessing officers have adopted as a measure of value for assess-

ments sixty per cent of the market value, and uniformly applied it, an assessment on a specified tract, conclusively shown to be in excess of that amount, cannot be sustained by reference to this section, prior to amendment requiring all property to be assessed at its cost value: **Savage v. Pierce County**, 68 Wash. 623, 123 Pac. 1088.

Validity of statute providing for tax assessment at fifty per cent of value of property. **Ann. Cas. 1915D, 446.**

§ 11122. [9113.] Realty, How Listed.

The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the plat and description book in numerical order a complete list of all lands or lots subject to taxation, showing the names and owners, if to him known, and if unknown, so stated; the number of acres and lots or parts of lots included in each description of property and the value per acre or lot: Provided, that the assessor shall give to each tract of land where described by metes and bounds a number, to be designated as Tax No. — which said number shall be placed on the tax-rolls to indicate that certain piece of real estate bearing such number, and described by metes and bounds in the plat and description book herein mentioned, and it shall not be necessary to enter a description by metes and bounds on the tax-roll of the county, and the assessor's plat and description book shall be kept as a part of the tax collector's records: And provided further, that the board of county commissioners of any county may by order direct that the property be listed numerically according to lots and blocks or section, township and range, in the smallest platted or government subdivision, and when so listed the value of each block, lot or tract, the value of the improvements thereon and the total value thereof, including improvements thereon, shall be extended after the description of each lot, block or tract, which last extension shall be in the column headed "Total value of each tract, lot or block of land assessed with improvements as returned by the assessor." In carrying the values of said property into the column representing the equalized value thereof, the county auditor shall include and carry over in one item the equalized valuation of all lots in one block, or land in one section, listed consecutively, which belong to any one person, firm or corporation, and are situated within the same road or school district or municipal corporation, and in the assessed value of which the county board of equalization has made no change. Where assessed valuations are changed, the equalized valuation must be extended and shown by item. The detail and assessment lists and blanks shall be in readiness for delivery to the assessors on the third Monday of January of each year. [L. '01, p. 167, § 1. Cf. L. '93, p. 341, § 45; L. '95, p. 512, § 4; L. '97, p. 155, § 43; L. '99, p. 287, § 3.]

See notes to § 11097.

Cited in 28 Wash. 100, 256; 33 Wash. 7, 8, 13; 35 Wash. 274; 48 Wash. 172; 96 Wash. 331; 112 Wash. 110.

Separate Parcels of Land: See Remington's Digest, Tax., § 53; **Mason v. Purdy**, 11 Wash. 591, 40 Pac. 130; **Lock-**

wood v. Roys, 11 Wash. 697, 40 Pac. 346; Pacific County ex rel. Lockwood v. Ellis, 12 Wash. 108, 40 Pac. 632; Eureka District Gold Mining Co. v. Ferry County, 28 Wash. 250, 68 Pac. 727; Million v. Wells, 29 Wash. 106, 69 Pac. 633.

ASSESSMENT ROLLS OR BOOKS: See Remington's Digest, Tax., §§ 74—81.

§ 74. Form and Arrangement: State ex rel. Seattle v. Abrahams, 6 Wash. 372, 33 Pac. 964.

§ 75. Designation of Persons—Owners or Others Unknown: Baer v. Melody Choir, 7 Wash. 631, 32 Pac. 776, 36 Pac. 286; Vestal v. Morris, 11 Wash. 451, 39 Pac. 960; Coolidge v. Pierce County, 28 Wash. 95, 68 Pac. 391; Woodward v. Taylor, 33 Wash. 1, 73 Pac. 785, 75 Pac. 646.

An assessment of personal property in the wrong name does not invalidate the tax, where the owner knew thereof and had been doing business and paying taxes in such name: J. K. Lumber Co. v. Ash, 104 Wash. 388, 176 Pac. 550.

§ 76. Description of Property—Real Property: Noyes v. King County, 18 Wash. 417, 51 Pac. 1052; Eureka District

Gold Mining Co. v. Ferry County, 28 Wash. 250, 68 Pac. 727; Martin v. Rankert, 67 Wash. 325, 121 Pac. 817; Old Republic Mining Co. v. Ferry County, 69 Wash. 600, 125 Pac. 1018; Continental Distributing Co. v. Smith, 74 Wash. 10, 132 Pac. 631.

§ 77. Extending Amount of Tax: State ex rel. Ross v. Headlee, 22 Wash. 126, 66 Pac. 126.

§ 78. Omissions: Spokane Falls v. Browne, 3 Wash. 84, 27 Pac. 1077; Eureka Dist. Gold Min. Co. v. Ferry County, 28 Wash. 250, 68 Pac. 727; Doty Lumber & Shingle Co. v. Lewis County, 60 Wash. 428, 111 Pac. 562, Ann. Cas. 1912B, 870.

§ 79. Amendment by Assessors: Lewis v. Bishop, 19 Wash. 312, 53 Pac. 165.

§ 80. Curative Statutes: Frederick v. Seattle, 13 Wash. 428, 43 Pac. 364; Coolidge v. Pierce County, 28 Wash. 95, 68 Pac. 391.

§ 81. Conclusiveness and Effect: Town of Hamilton v. Chopard, 9 Wash. 352, 37 Pac. 472; Seattle v. Parker, 13 Wash. 450, 43 Pac. 369; Olympia v. Stevens, 15 Wash. 601, 47 Pac. 11.

§ 11123. [9114.] Owner shall Plat Irregular Tracts.

In all cases of irregular subdivided tracts or lots of land other than any regular government subdivision the county assessor shall outline a plat of such tracts or lots and notify the owner or owners thereof with a request to have the same surveyed by the county surveyor, and cause the same to be platted into numbered (or lettered) lots or tracts: Provided, however, that where any county has in its possession the correct field-notes of any such tract or lot of land a new survey shall not be necessary, but such tracts may be mapped from such field-notes. [L. '01, p. 265, § 1.]

This and the next two sections were not originally part of this chapter.

§ 11124. [9115.] When Owner Refuses to Plat.

In case the owner of such tracts or lots neglect or refuse to have the same surveyed or platted, the county assessor shall notify the board of county commissioners in and for the county, who may order and direct the county surveyor to make the proper survey and plat of the tracts and lots. [L. '01, p. 265, § 2.]

See note to § 11123.

§ 11125. [9116.] Plats—Requirements as to.

A plat shall be made on which said tracts or lots of land shall be accurately described by lines, and numbered (or lettered) which numbers (or letters) together with number of the section, township and range shall be distinctly marked on such plat, and the field-notes of all such tracts or lots of land shall describe each tract or lot according to the survey, and such tract or lot shall be numbered (or lettered) to corre-

spond with its number (or letter) on the map. The plat shall be given a designated name by the surveyor thereof. When the survey, plat, field-notes and name of plat, shall have been approved by the board of county commissioners, the plat and field-notes shall be filed and recorded in the office of the county auditor, and the description of any tract or lot of land described in said plats by number (or letter) section, township and range, shall be a sufficient and legal description for revenue and all other purposes. [L. '01, p. 265, § 3.]

See note to § 11123.

§ 11126. [9117.] Manner of Listing Personalty.

Personal property shall be listed in the manner following:

First: Every person of full age and sound mind, being a resident of this state, shall list all his moneys, notes, accounts, bonds or stock, shares of stock of joint stock or other companies (when the property of such company is not assessed in the state), franchises, royalties and other personal property;

Second: He shall also list separately, and in the name of his principal, all moneys deposited subject to his order;

Third: The property of a minor child shall be listed by his guardian or by the person having such property in charge;

Fourth: The property of an idiot or lunatic, by the person having charge of such property;

Fifth: The property of a person for whose benefit it is held in trust by the trustee of the estate of the deceased person, or by the executor or administrator;

Sixth: The property of corporations whose assets are in the hands of receivers, by such receivers or their agents;

Seventh: The property of a body politic or corporate, by the president or proper agent or officer thereof;

Eighth: The property of a firm or company, by a partner or agent thereof;

Ninth: Money and property in litigation, in possession of any county officer, must be assessed to the custodian thereof, and the taxes thereon paid by the custodian thereof under the direction of the court. [L. '93, p. 327, § 8; L. '97, p. 141, § 8.]

See supra, § 11099, exemption of notes, bonds, etc., superseding subdivision one of this section, in part.

Penalty for false statement under this act: See § 11189, infra.

Cited in 3 Wash. 299, 304, 307; 18 Wash. 329; 21 Wash. 54, 500; 23 Wash. 438.

§ 11127. [9118.] Assessment in Case of Change of Residence—Effect of Assessment in Another State.

The owner of personal property removing from one county to another between the first day of March and the first day of July shall be assessed in either in which he is first called upon by the assessor. The owner of personal property moving into this state from another state between the first day of March and the first day of July shall list the property owned by him on the first day of March of such year in the county in

which he resides: Provided, that if such person has been assessed and can make it appear to the assessor that he is held for the tax of the current year in another state or county, he shall not again be assessed for such year. [L. '93, p. 326, § 7; L. '97, p. 141, § 7.]

See notes to last section.

Cited in 16 Wash. 370; 27 Wash. 97.

§ 11128. [9119.] Animals Grazing, How Assessed.

When any cattle, horses, sheep or goats are driven into any county of this state for the purpose of grazing therein at any time after the first Monday in April in any year, they shall be liable to be assessed for all taxes leviable in that county for that year, the same as if they had been in the county at the time of the annual assessment, and it shall be the duty of the assessor in any county in which any of said stock are driven, to assess the same, and the taxes on said stock shall become due upon the assessment of the same, and the sheriff shall collect said taxes at once in the manner prescribed by law for the collection of delinquent taxes: Provided, that such stock has not been assessed in some other county in this state for that year. [L. '95, p. 105, § 1.]

Tax on stock of itinerant venders: See *infra*, § 11273, and notes.

Cited in 16 Wash. 369; 35 Wash. 32;
42 Wash. 303.

Situs of animals for tax purposes. 8
Ann. Cas. 677.

§ 11129. [9120.] Payment in Another State, Effect of.

The payment of taxes in any other state or territory, or the proof that said stock has been assessed for that year in any other state or territory, shall in no way exempt said stock from the operation of the last preceding section. [L. '95, p. 106, § 2.]

See § 11127, *supra*, a later enactment.

§ 11130. [9121.] Place Where to be Listed.

Personal property, except such as is required in this chapter to be listed and assessed otherwise, shall be listed and assessed in the county where the owner or agent resides. If there be no principal office or place of business in this state, then at the place in this state where any such corporation or person transacts business. The personal property pertaining to the business of a merchant or of a manufacturer shall be listed in the town or place where his business is carried on. [L. '93, p. 327, § 9; L. '97, p. 141, § 9.]

"This chapter": See note to § 11099.

See *infra*, § 11273.

Cited in 21 Wash. 500; 24 Wash. 629;
27 Wash. 98; 77 Wash. 301.

Place Where to be Listed: See Remington's Digest, Tax., §§ 21, 22, 49—52.

§ 21. Situs of Property—In General: Barnes v. Flummerfelt, 21 Wash. 498, 58 Pac. 575.

Personal property in military reservation: Concessions Co. v. Morris, 109 Wash. 46, 186 Pac. 655.

§ 22. Property Taxed in Other Jurisdiction: Nathan v. Spokane County, 35 Wash. 26, 76 Pac. 521, 102 Am. St. Rep. 888, 65 L. R. A. 336; Spaulding v. Adams County, 79 Wash. 193, 140 Pac. 367.

§ 49. Ownership or Possession of Property—Property of Decedent's Estates: Walla Walla v. Moore, 16 Wash. 339, 47 Pac. 753, 58 Am. St. Rep. 31.

§ 50. Partnership Property: Barnes v. Flummerfelt, 21 Wash. 498, 58 Pac. 575.

§ 52. Corporations and Corporate Property, in General: *Northwestern Lumber Co. v. Chehalis County*, 24 Wash. 626, 64 Pac. 787.

Situs for taxation of membership in exchange or board of trade. 17 A. L. R. 89.

Situs of decedent's personal property for tax purposes. 1 Ann. Cas. 438; 20 Ann. Cas. 729; 20 L. R. A. 153; L. R. A. 1915C, 949.

Place of taxation of corporate franchise. 7 Ann. Cas. 518.

Place of taxation of tangible personality of corporation as dependent upon location of principal office. 19 Ann. Cas. 958; 69 L. R. A. 431.

Oil and gas rights or privileges as independent subject of taxation, or as tangible property for purposes of taxation. 16 A. L. R. 513.

§ 11131. [9122.] Property of Common Carriers, Where Assessed.

The personal property of express, transportation and stage companies shall be listed and assessed in the county where the same is usually kept. All vessels of every class which are by law required to be registered, licensed or enrolled, must be assessed and the taxes thereon paid only in the county where the owner, or managing owner or agent thereof resides: Provided, that such interest shall be taxed but once. Vessels registered, licensed or enrolled out of, and plying in whole or in part in, the waters of this state, the owners, managing owners or agents of which reside in this state, must be assessed in this state, and in the county in which the owners, managing owners or agents reside, to the value of the respective share or shares owned by said person or persons. All boats and small craft not required to be registered must be assessed in the county where the same are kept. [L. '93, p. 327, § 10; L. '97, p. 142, § 10.]

Railroads, see *infra*, § 11160.

Shipping: See *Remington's Digest, Tax.*, § 47; *Northwestern Lumber Company v. Chehalis Co.*, 25 Wash. 95, 64 Pac. 909, 87 Am. St. Rep. 747, 54 L. R. A. 212; *North American Dredging Co. v. Taylor*, 56 Wash. 565, 106 Pac. 162, 29 L. R. A. (N. S.) 105; *Pacific Cold Storage Co. v. Pierce County*, 85 Wash. 626, 149 Pac. 34; *United States Whaling Co. v. King County*, 96 Wash. 434, 165 Pac. 70.

Situs of vessels for purpose of taxa-

tion. 3 Ann. Cas. 1103; 6 Ann. Cas. 211; 7 Ann. Cas. 446; 20 Ann. Cas. 966; Ann. Cas. 1914D, 289; 37 L. R. A. 518; 69 L. R. A. 447; 29 L. R. A. (N. S.) 105.

What is home port for purpose of taxation of vessel. 2 L. R. A. (N. S.) 197, 1196.

Where wrecked vessel taxable. 8 A. L. R. 663.

§ 11132. [9123.] Personalty of Gas, etc., Companies, Where Assessed.

The personal property of gas, electric and water companies shall be listed and assessed in the town or city where the same is located. Gas and water mains and pipes laid in roads, streets or alleys, shall be held to be personal property. [L. '93, p. 328, § 11; L. '97, p. 142, § 11.]

§ 11133. [9124.] Street Railroad, etc., Where Assessed.

The personal property of street railroad, plank road, gravel road, turnpike or bridge companies, shall be listed and assessed in the county, town or city where the same is located, and the track, road or bridge shall be held to be personal property. [L. '93, p. 328, § 12; L. '97, p. 142, § 12.]

§ 11134. [9125.] Personalty of Owner not Residing on Farm, Where Assessed.

When the owner of livestock or other personal property connected with a farm does not reside thereon, the property shall be listed and as-

sessed in the county or place where the farm is situated; if not listed in said county, then to be taxed where found. [L. '93, p. 328, § 13; L. '97, p. 142, § 13.]

Cited in 77 Wash. 301.

The word "farm" is used in a generic, rather than a restricted sense, and includes a ranch of grazing lands used ex-

clusively for the raising of sheep; thus recognizing the equity of the home county to have the tax: *Porter v. County of Yakima*, 77 Wash. 299, 137 Pac. 466.

§ 11135. [9126.] Question of Place, How Determined.

In all questions that may arise under this chapter as to the proper place to list personal property, or where the same cannot be listed as stated in this chapter, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties, or places in different counties by the auditor of the state; and when fixed in either case shall be as binding as if fixed by this chapter. [L. '93, p. 328, § 14; L. '97, p. 142, § 14.]

"This chapter": See note to § 11099.

See *supra*, § 11088, supervisory powers and duties of state board of tax commissioners.

§ 11136. [9127.] List of Personalty to be Made Under Oath.

Every person required by this chapter to list property shall make out and deliver to the assessor, when required, a statement, verified by his oath, of all the personal property in his possession or under his control, and which, by the provisions of this chapter, he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor; no person shall be required to list for taxation in his statement to the assessor any share or portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the auditor of state, or as otherwise required under the laws of this state. [L. '93, p. 328, § 15; L. '97, p. 143, § 15.]

"This chapter": See note to § 11099.

See *supra*, § 11126, mode of assessment of corporate stock, etc.

Cited in 20 Wash. 680; 23 Wash. 438.

§ 11137. [9128.] Forms for Listing.

The auditor of state shall prepare and furnish county auditors with suitable blank forms of detail and assessment lists or schedules, to be paid for by the county at their cost to the state, to be used by the assessors for the listing and assessment and equalization of property, and upon which shall be entered by the assessor, or by the owner or holder, the agent or attorney, the partner, trustee, assignee, receiver, guardian, executor or administrator, or by the president, secretary or principal accounting officer of any company or corporation, a full, true and accurate statement or listing of all property, real and personal, as being

owned, held or controlled as aforesaid, and as in such detail list directed, with any and all other property that may not be specified therein, if any such there be, that may be liable to assessment and taxation, and including all property that may or shall be deducted therefrom under exemptions. Such listing shall be verified under the oath of the owner or holder of any such listed property, or by the duly authorized agent making the same, and the true and fair value of such property having been determined and fixed by the assessor, such valuation shall be entered opposite each and every item as therein listed and verified, but to which detail and assessment list may and shall be added by the auditor, assessor or his deputy, any and all other taxable property that may at any time be hereafter created or discovered, not at present appearing therein, so that no property shall escape assessment and taxation. Said detail list shall be substantially in the following form:—

**DETAIL LIST AND ASSESSMENT OF REAL PROPERTY OF
—, OF — COUNTY, WASHINGTON, 189—.**

Resident road district —. Resident school district —. Character or designation of property. Description of lands and town property. (In describing lands state whether they are farming, grazing, mineral or timber lands; also, if city or town property, give the name of the town and plat, or addition, and give accurate description of all other designated real estate under this head.) Town or city property. No. lot. No. block. No. of section. No. of township. No. of range. No. of acres in each tract or parcel except lots. No. of acres in each tract or parcel improved. Property, road district. Property, school district. Full cash value of each tract, parcel, lot or block of land assessed. Full cash value of improvements on each tract, lot, parcel of land assessed. Full cash value of all real property assessed. Road poll. Bridge. Equalized value by county board. Consolidated tax. Special school tax. Special road tax. Municipal tax. Total tax.

RECAPITULATION.

Farm lands, unimproved (acres), —. Grazing lands (acres), —. Timber lands (acres), —. Mineral lands (acres), —. Improved lands (acres), —. Total acreage, —. Aggregate assessed value of real property, \$—. Aggregate assessed value of personal property, \$—. Total value of all property assessed, \$—. Total road poll tax, \$—.

DETAIL LIST OF PERSONAL PROPERTY.

A schedule of the numbers and amounts of all personal property in the possession or under control of —, belonging to —, on the first day of March, 189—, listed by —, of the town of —, county of —, and state of Washington, as required by the general revenue law now in force in this state. Residence No. —, street; school district No. —; road district No. —. (If residing in town or city, give name and number of street.)

ITEMS OF PROPERTY.		No.	Assessor's valuation.
1. Horses:	One year old.....	\$.....
	Two years old.....
	Three years old and over.....
	Work horses
	Stallions
2. Cattle:	One year old.....
	Two years old.....
	Cows
	All other cattle two years old and over.....
3.	Mules and asses of all ages.....
4.	Sheep of all ages.....
5.	Hogs of all ages.....
6.	Wagons and carriages of whatever kind.....
7.	Sewing and knitting machines.....
8.	Watches and clocks.....
9.	Melodeons and organs.....
10.	Pianofortes
11.	Household and office furniture, full value.....
12.	Agricultural tools, implements, machinery.....
13.	Gold and silver plate and plated ware.....
14.	Diamonds and jewelry and firearms.....
15.	Royalties and patent rights
16.	Steamboats, sailing vessels, wharf boats, barges, etc.....
17.	Goods and merchandise, lumber, saw-logs, wood, coal, wool, hides, etc..
18.	Manufacturers' materials and manufactured articles.....
19.	Manufacturers' tools, implements and machinery, including engines and boilers
20.	Moneys of banks (whose capital is not represented by shares of stock), bankers, brokers or stock jobbers.....
21.	Credits of banks (whose capital is not represented by shares of stock), bankers, brokers or stock jobbers.....
22.	Moneys other than of banks, bankers, brokers or stock jobbers, gold- dust or bullion on hand or deposit.....
23.	Bonds and stocks (other than bank stock).....
24.	Shares of gas, wharf or water stock.....
25.	Notes, accounts, warrants and other credits.....
26.	Shares of capital stock of insurance or other companies and associa- tions not incorporated by the laws of this state.....
27.	Stock and furniture of sample-rooms, saloons and eating-houses, in- cluding billiard, bagatelle and similar tables.....
28.	Hay, wheat, oats, corn, barley or other farm products.....
29.	The value of all elevators, warehouses and improvements on lands, the title of which is vested in any railroad company.....
30.	The value of all improvements on lands held under the laws of the United States
31.	Shares of stock of insurance or other companies or associations in- corporated under the laws of this state.....
32.	Gas or water mains. Total number of feet and size.....
33.	Gas or water pipe other than mains. Total number of feet and aver- age size
34.	Telegraph, telephone and electric light lines as per schedule marked "F" in addition to their personal property above listed.....
35.	Cable, horse and electric railways as per schedule marked "F" in addition to their personal property above listed.....
36.	The value of all other articles of personal property not included in the preceding items.....
	Total value of all personal property listed by assessor under section 11137\$
	\$

	Total exemptions\$
	Total value of all personal property assessed by assessor under section 11137\$

AFFIDAVIT OF PERSON LISTING THE WITHIN PROPERTY.

State of Washington, }
 County of —, } ss.

I, —, do solemnly swear that I am a resident of the county of —, that the within and foregoing detail lists contain full and correct statements of all property subject to taxation in this county which I or any firm of which I am a member, or any corporation, association or company of which I am president, cashier, secretary or managing agent, owned, claimed, possessed or controlled on the first day of March, 189—, at 12 o'clock meridian, and which is not already assessed for said year, and that I have not in any manner whatever transferred or disposed of any property or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement.

—, —,
 Residence —.

Subscribed and sworn to before me this — day of —, 18—.

—, —,
 County Assessor.

[L. '93, p. 329, § 16; L. '97, p. 143, § 16.]

"State auditor" to prepare blanks: See supra, § 11088, supervisory powers of tax commissioners.

Cited in 3 Wash. 304, 307; 21 Wash. 500.

§ 11138. [9129.] Assessor may Examine Person Making List Under Oath.

When the assessor shall be of opinion that the person listing property for himself or for any other person, company or corporation, has not made a full, fair and complete list of such property, he may examine such person under oath in regard to the amount of the property he is required to list, and if such person shall refuse to answer under oath, and a full discovery make, the assessor may list the property of such person, or his principal, according to his best judgment and information. [L. '93, p. 332, § 17; L. '97, p. 146, § 17.]

Cited in 100 Wash. 27.

§ 11139. [9130.] Who may Administer Oaths.

Any oath authorized to be administered under this chapter may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths. Any person willfully making a false list, schedule or statement under oath shall be liable as in case of perjury. [Cf. L. '93, p. 347, § 58, and p. 340, § 42; L. '97, p. 162, § 57.]

Cited in 83 Wash. 423; 100 Wash. 27.

§ 11140. [9131.] Merchandise, How Listed.

Whoever owns, or has in his possession or subject to his control, any goods, merchandise, grain or produce of any kind, or other personal property within this state, with authority to sell the same, which has been purchased either in or out of this state, with a view to being sold at an

advanced price or profit, or which has been consigned to him from any place out of this state for the purpose of being sold at any price within the state, shall be held to be a merchant, and when he is by this act required to make out and to deliver to the assessor a statement of his other personal property, he shall state the value of such property pertaining to his business as a merchant. No consignee shall be required to list for taxation the value of any property the product of this state, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded, if he has no interest in such property nor any profit to be derived from its sale. The stock of nurserymen, growing or otherwise, shall be listed and assessed as merchandise. [L. '93, p. 332, § 18; L. '97, p. 146, § 18.]

§ 11141. [9132.*] Property of Manufacturers, How Assessed.

Every person who purchases, receives or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing shall be held to be a manufacturer, and he shall, when required to, make and deliver to the assessor a statement of the amount of his other personal property subject to taxes, also include in his statement the value of all articles purchased, received or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying or refining. Every person owning a manufacturing establishment of any kind and every manufacturer shall list as part of his manufacturer's stock the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing except such fixtures as have been considered as part of any parcel of real property including all tools and implements of every kind, use or design to be used for the first aforesaid purpose: Provided, however, that all ore or metal shipped from without this state to any smelter or refining works within this state while in process of reduction or refinement and for thirty days after the completion of said reduction or refinement, shall be considered and held to be property in transit and nontaxable. [L. '21, p. 178, § 1; L. '93, p. 332, § 19; L. '97, p. 146, § 19.]

Taxation of manufacturing companies. 58 L. B. A. 603; 64 L. B. A. 33.

§ 11142. [9133.] Corporations to Furnish Sworn Statements.

The president, secretary or principal accounting officer or agent of any company or association, whether incorporated or unincorporated, except as otherwise provided for in this chapter, shall make out and deliver to the assessor a sworn statement of its property, setting forth particularly,—

First: The name and location of the company or association;

Second: The real property of the company or association, and where situated;

Third: The nature and value of its personal property.

The real and personal property of such company or association shall be assessed the same as other real and personal property. In all cases

of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain.

[L. '93, p. 333, § 20; L. '97, p. 147, § 20.]

See *supra*, § 11136, and notes.

Cited in 20 Wash. 680; 21 Wash. 500; 23 Wash. 437; 24 Wash. 378; 69 Wash. 316.

MODE OF ASSESSMENT OF CORPORATE STOCK, PROPERTY, OR RECEIPTS: See Remington's Digest, Tax., §§ 65, 66.

Report or Statement by Corporation, and List of Stockholders: *Hewitt v. Traders' Bank*, 18 Wash. 326, 51 Pac. 468; *Ridpath v. Spokane County*, 23 Wash. 463, 63 Pac. 261; *Paul v. McGraw*, 3 Wash. 296, 28 Pac. 532; *Paul v. Furth*, 3 Wash. 296, 28 Pac. 532; *Paul v. Chapin*, 3 Wash. 433, 28 Pac. 760.

CORPORATIONS AND CORPORATE STOCK AND PROPERTY: See Remington's Digest, Tax., §§ 24—27.

§ 24. **Classification for Purpose of Taxation:** *Ridpath v. Spokane County*, 23 Wash. 436, 63 Pac. 261. Overruled in *Spokane & Eastern Trust Co. v. Spokane*

County, 70 Wash. 48, 126 Pac. 54, Ann. Cas. 1914B, 641.

§ 25. **Corporate Franchises and Privileges:** *Commerical Elec. L. & P. Co. v. Judson*, 21 Wash. 49, 56 Pac. 829, 57 L. R. A. 78; *Chehalis Boom Co. v. Chehalis County*, 24 Wash. 135, 63 Pac. 1123; *Edison Electric Illuminating Co. v. Spokane County*, 22 Wash. 168, 60 Pac. 132; *Ridpath v. Spokane County*, 23 Wash. 436, 63 Pac. 261; *Lewiston Water etc. Co. v. Asotin*, 24 Wash. 371, 64 Pac. 544.

§ 26. **Shares of Stockholders:** *Ridpath v. Spokane County*, 23 Wash. 436, 63 Pac. 261.

§ 27. **Ownership or Possession of Property—Property in Custody of the Law:** *Spokane County v. Annis*, 43 Wash. 655, 86 Pac. 1066.

Taxation of corporate franchise as realty or personalty. 19 Ann. Cas. 167; 57 L. R. A. 54.

§ 11143. [9134.] Bank Stock, Where Listed—Valuation of.

All the shares of stock in banks whether of issue or not, existing by authority of the United States or of the state, and located within the state, shall be assessed to the owners thereof in the cities or towns, where such banks are located, and not elsewhere, in the assessment of all state, county and municipal taxes imposed and levied in such place whether such owner is a resident of said city or town or not; all such shares shall be assessed at their full and fair value in money on the first day of March in each year, first deducting therefrom the proportionate part of the assessed value of the real estate belonging to the bank. And the persons or corporations who appear from the records of the banks to be owners of shares at the close of the business day next preceding the first day of March in each year shall be taken and deemed to be the owners thereof for the purposes of this section. [L. '07, p. 61, § 1. Cf. L. '93, p. 333, § 21; L. '97, p. 147, § 21; L. '03, p. 123, § 1.]

Cited in 17 Wash. 624; 18 Wash. 327; 20 Wash. 158, 680; 21 Wash. 23; 26 Wash. 80; 38 Wash. 259; 70 Wash. 49, 51; 85 Wash. 350; 93 Wash. 672—675.

Discrimination Between National Bank Shares and Other Moneyed Capital: See Remington's Digest, Tax., § 3: *First Nat. Bank v. Chehalis County*, 6 Wash. 64, 32 Pac. 1051; *Washington Nat. Bank v. King County*, 9 Wash. 607, 38 Pac. 219; *Newport v. Mudgett*, 18 Wash. 271, 51 Pac. 466.

Equality and Uniformity—Exclusion from incorporated town: *State ex rel.*

Cummings v. Johnson, 105 Wash. 93, 177 Pac. 699.

— Special assessments—Benefit to property: *State ex rel. Stanger v. Bartlett*, 112 Wash. 299, 192 Pac. 945.

Discrimination Between National and State Banks: See Remington's Digest, Tax., § 7: *Pullman State Bank v. Manning*, 18 Wash. 250, 51 Pac. 464.

Valuation of Corporate and Bank Stock: See Remington's Digest, Tax., § 10: *Pacific National Bank v. Pierce Co.*, 20 Wash. 675, 56 Pac. 936 (overruled); *Eureka District Gold Mining Co. v. Ferry*

County, 28 Wash. 250, 68 Pac. 727; Spokane & Eastern Trust Co. v. Spokane County, 70 Wash. 48, 126 Pac. 54, Ann. Cas. 1914B, 641; Spokane & Eastern Trust Co. v. Spokane County, 70 Wash. 48, 126 Pac. 54, Ann. Cas. 1914B, 641.

See, also, Scandinavian-Am. Bank v. Pierce County, 20 Wash. 155, 55 Pac. 40.

Excise Taxes: See Remington's Digest, Tax., § 13; Pacific National Bank v. Pierce County, 20 Wash. 675, 56 Pac. 936; Ridpath v. Spokane County, 23 Wash. 436, 63 Pac. 261; Chehalis Boom Co. v. Chehalis County, 24 Wash. 135, 63 Pac. 1123.

Real Estate Deductions: See Remington's Digest, Tax., § 29; Scandinavian American Bank of Tacoma v. Pierce County, 93 Wash. 671, 161 Pac. 469.

Shares of Stockholders After Insolvency: See Remington's Digest, Tax., § 30; Baker v. King County, 17 Wash. 622, 50 Pac. 481; Bramel v. Manring, 18 Wash. 421, 51 Pac. 1050; Hewitt v. Traders' Bank, 18 Wash. 326, 51 Pac. 468.

Deduction of Indebtedness: See Remington's Digest, Tax., § 69; Hewitt v. Traders' Bank, 18 Wash. 326, 51 Pac. 468.

Valuation of Capital—In General: See Remington's Digest, Tax., § 67; Pacific National Bank v. Pierce County, 20 Wash. 675, 56 Pac. 936.

Deduction of Value of Property Otherwise Taxed: See Remington's Digest,

Tax., § 68; Dexter Horton National Bank v. McKenzie, 69 Wash. 314, 124 Pac. 915.

Assessment of Banks and Bank Shares: See Remington's Digest, Tax., § 70; Paul v. McGraw, 3 Wash. 396, 28 Pac. 532; First National Bank v. Chehalis County, 6 Wash. 64, 32 Pac. 1051; Citizens' Nat. Bank of Tacoma v. Wintler, 14 Wash. 558, 45 Pac. 38, 53 Am. St. Rep. 890; Ladd v. Gilson, 26 Wash. 79, 66 Pac. 126; Pacific National Bank v. Pierce County, 20 Wash. 675, 56 Pac. 936; Jefferson County v. First Nat. Bank, 38 Wash. 255, 80 Pac. 449; Scandinavian American Bank of Tacoma v. Pierce County, 85 Wash. 348, 148 Pac. 18.

Deduction of Indebtedness of Holders of Stock: See Remington's Digest, Tax., § 72; Pullman State Bank v. Manring, 18 Wash. 250, 51 Pac. 464; Bramel v. Manring, 18 Wash. 421, 51 Pac. 1050; Jefferson County v. First Nat. Bank, 38 Wash. 255, 80 Pac. 449.

Notice of Assessment: See Remington's Digest, Tax., § 73; Edison Elec. Illuminating Co. v. Spokane County, 22 Wash. 168, 60 Pac. 132.

State taxation of national banks. 45 L. R. A. 737.

Taxation of shares of stock in national banks. 3 L. R. A. (N. S.) 584.

State taxation of deposits in national bank. Ann. Cas. 1912D, 37.

§ 11144. [9135.] Payment of Tax.

Every such bank or other corporation shall pay to the collector, or other person authorized to collect the taxes of the state, county, city or town in which the same is located, at the time in each year when other taxes assessed in the said state, county, city or town become due, the amount of the tax so assessed in each year upon the shares in such bank or other corporation. If such tax is not so paid, the said bank or other corporation shall be liable for the same. [L. '93, p. 334, § 22; L. '97, p. 148, § 22.]

§ 11145. [9136.] Tax a Lien on Stocks, etc.—Foreclosure, etc.

The shares of such banks or other corporations shall be subject to the tax paid thereon by the corporation or by the officers thereof, and the corporation and the officers thereof shall have a lien on all the shares in such bank or other corporation and on all the right and property of the shareholders in the corporate property for the payment of said taxes, which lien may be foreclosed by a similar proceeding as under chattel mortgages, and the said tax, with interest thereon at the rate of fifteen per cent per annum from the day when the tax became due, together with a reasonable attorney's fee, may be recovered as in a civil action

brought by the treasurer of such county. [Cf. L. '93, p. 334, § 23; L. '97, p. 148, § 23.]

Cited in 38 Wash. 259.

§ 11146. [9137.] Cashier's List of Shareholders.

The cashier of every such bank shall make and deliver to the assessor of the county in which such bank is located, on or before the fifteenth day of March in each year, a statement verified by the oath of such cashier showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of the business day next preceding the first day of March, as the same then appeared on the books of said bank. If the cashier fails to make such statement, said assessor shall forthwith, upon such failure, obtain a list of shareholders, with the residence of and number of shares belonging to each. [L. '93, p. 334, § 24; L. '97, p. 148, § 24.]

Cited in 20 Wash. 680.

§ 11147. [9138.] List of Foreign and Private Banks.

Foreign banks and private bankers doing business in this state and having no fixed amount of capital paid in and used permanently in the conduct of such business shall be assessed on an amount equal to a general average of money used as exhibited by daily or monthly balance sheets during the year preceding the time of rendering such tax list to the assessor. If such bank or banker shall refuse to make such return of capital as above provided, then the assessor shall proceed to make an arbitrary assessment, which shall be as fair and equitable as he may be able to make from the best information he possesses. [L. '93, p. 334, § 25; L. '97, p. 149, § 25.]

§ 11148. [9139.] Land Sold by Municipality Listed to Whom.

Property held under a contract for the purchase thereof, belonging to the state, county or municipality, and school and other state lands, shall be considered for all purposes of taxation, as the property of the person so holding the same. And no deed shall ever be executed until all taxes and municipal charges are fully paid thereon. [Cf. L. '93, p. 335, § 26; L. '97, p. 149, § 26.]

Cited in 20 Wash. 151; 23 Wash. 370; 25 Wash. 138; 96 Wash. 9.

§ 11149. [9140.] Improvements on Public Lands, Listed to Whom.

The assessor must assess all improvements on public lands as personal property until the settler thereon has made final proof. After final proof has been made, and a certificate issued therefor, the land itself must be assessed, notwithstanding the patent has not been issued. [L. '93, p. 335, § 27; L. '97, p. 149, § 27.]

See supra, § 8007, harbor area improvements, when exempt.

See supra, § 11099, and note, personalty defined.

Cited in 23 Wash. 370; 76 Wash. 572.

PUBLIC PROPERTY AND INSTITUTIONS: See Remington's Digest, Tax., §§ 34—36.

§ 34. Public Lands and Rights and Interests Therein—In General: Page v. Pierce County, 25 Wash. 6, 64 Pac. 801; Frazee v. Spokane County, 29 Wash. 278,

69 Pac. 779; Washington Iron Works Co. v. King County, 20 Wash. 150, 54 Pac. 1004; Gray's Harbor Co. v. Chehalis County, 23 Wash. 369, 63 Pac. 233; State v. Frost, 25 Wash. 134, 64 Pac. 902; Moeller v. Gormley, 44 Wash. 465, 87 Pac. 507; Bird Timber Co. v. Snohomish County, 81 Wash. 416, 143 Pac. 433; Wildy v. Henry, 86 Wash. 387, 150 Pac. 620; Bird Timber Co. v. Snohomish County, 88 Wash. 90, 152 Pac. 689; Connor v. Spokane County, 96 Wash. 8, 164 Pac. 517; Knapp v. Douglas County, 100 Wash. 125, 170 Pac. 559.

§ 35. — **Improvements:** Percival v. Thurston County, 14 Wash. 586, 45 Pac. 159; Gray's Harbor Co. v. Chehalis County, 23 Wash. 369, 63 Pac. 233.

§ 36. **Indian Lands:** Page v. Pierce County, 25 Wash. 6, 64 Pac. 801; Frazee v. Spokane County, 29 Wash. 278, 69 Pac. 779; Goudy v. Meath, 38 Wash. 126, 80 Pac. 295.

Property of State or Municipality: See Remington's Digest, Tax., § 37; Gasaway v. Seattle, 52 Wash. 444, 100 Pac. 991, 21 L. R. A. (N. S.) 68; State v. Snohomish County, 71 Wash. 320, 128 Pac. 667.

State lands—Right of action to set aside tax—Lieu land selections—Title in abeyance: Ortman v. Kittitas County, 105 Wash. 144, 177 Pac. 721.

Power of State—Property of United States: See Remington's Digest, Tax., § 2; Haumesser v. Chehalis County, 76 Wash. 570, 136 Pac. 1141; Flood v. Virnig, 79 Wash. 417, 140 Pac. 333.

Under this section buildings erected and fixtures attached by a licensee at Camp Lewis under a contract with the commandant that they were to remain in case the licensee left the premises, belong to the United States and are not subject to taxation, in view of U. S. Const., Art. I, § 8, cl. 17, giving congress exclusive legislation over places purchased for forts and other needful buildings by consent of state legislature: Concessions Company v. Morris, 109 Wash. 46, 186 Pac. 655.

Materials assembled under a contract with the Emergency Fleet Corporation, partly paid for: Sloan Shipyards Corp. v. Thurston County, 111 Wash. 361, 190 Pac. 1015.

CHAPTER IV.

ASSESSMENT OF MINING PROPERTIES AND PROFITS.

§ 11150. Mines and Claims—Taxation Authorized.

All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead or other valuable mineral or metal deposits, which mining claims are acquired or held under the lode or placer mining laws of the United States after purchase thereof from the United States shall be taxed at the price paid the United States therefor unless the surface ground or mining claim is used for other than mining purposes and has a separate and independent value for such other purposes, in which case said surface ground or any part thereof so used for other than mining purposes shall be taxed at its value for such other purposes. Unpatented mining claims shall not be taxed, but the surface improvements thereon shall be taxed in the same manner as other improvements of like character and the net proceeds thereof shall be taxed as herein provided. All machinery used in mining and all property and surface improvements upon mines or mining claims, which have a value separate and independent of such mines or mining claims and the net annual proceeds of all mines and mining claims shall be taxed: Provided, that nothing in this act contained must be construed so as to exempt from taxation improvements, buildings, erections, structures or machinery placed upon any mining claim or used in connection therewith. [L. '21, p. 401, § 1.]

Mines and Implements Connected Therewith: See Remington's Digest, Tax., § 16; Doe v. Tenino Coal and Iron Co., 43 Wash. 523, 86 Pac. 938.

Interest in minerals as taxable separately from land. 15 Ann. Cas. 513; L. R. A. 1916D, 307.

Valuing undeveloped mining property
as prospect. 2 A. L. B. 1550.

Constitutionality of classification of
minerals for purposes of taxation.
L. B. A. 1916F, 164.

§ 11151. "Net Profits" Defined.

The term "net profits" as employed in this act means the amount of money received from the mining of said materials or metals from any mine or mining claim after the deduction of the actual expenditure of money for labor in and about extracting metals and minerals from the mine or mining claim and transporting the same to the mill, concentrator, smelter or reduction works and the reduction thereof and the conversion of the same into money or its equivalent, and also the deduction of all moneys expended for necessary labor, machinery and supplies needed and used in the mining operations, for the improvements necessary in and about the mine or mining claim, for reducing ores, for the construction of mills and reduction works used and operated in connection with the mine, or mining claim, for transporting the ore and for extracting the metals and minerals therefrom; but the money invested in the mine or improvements made during any year except the year immediately preceding such statement must not be included therein. Such expenditures shall not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the mine or personally superintending the management thereof. [L. '21, p. 402, § 2.]

§ 11152. Annual Statement Covering Mining Operations.

Every person, corporation or association, engaged in mining gold, silver, copper, lead or other precious and valuable minerals or metals, or mineral or metal deposits, must between the first day of January and the first day of March in each year, make out a statement of production, costs and of the net profits derived from the mining of said metals or minerals, from each mine or mining claim owned or worked by such person, or from each group of mines or mining claims worked by a common system of development, during the year preceding the first day of January. Such statement must be verified by the oath of such person, or superintendent or managing agent of such corporation or association, who must deliver the same to the assessor of the county in which such mines are situated. [L. '21, p. 403, § 3.]

§ 11153. Operation of Several Claims Under One System.

Where the same person or company or association is operating two or more mining claims under one general system of mining or development, the product of which group of mines is mingled and treated as one mining operation, the statement of the owner provided herein to be made, and the assessment provided herein to be made by the assessor, shall be made as to such entire group, and need not be made as to each particular mining claim constituting such group. [L. '21, p. 403, § 4.]

§ 11154. Punishment for False Statement.

If anyone herein required to make a statement, shall knowingly and willfully swear to any false statement contained therein then such

person shall be guilty of perjury, and shall be prosecuted and punished as provided for in other cases of perjury. [L. '21, p. 403, § 5.]

§ 11155. Powers and Duties of Assessor.

The assessor, after such statement has been rendered, shall have the right to examine the books and accounts of any person, corporation or association engaged in mining as mentioned in this chapter, in order to verify the statement made by such person, corporation or association, and if from such examination he finds such statement false, he must assess the net proceeds in the same manner as if no statement had been made and delivered, by making an estimate from the best sources within his reach, and if satisfied that the false statement was intentionally made, he shall add as a penalty therefor, to the amount of the net proceeds so found, fifty per cent thereof, which amount thus increased shall constitute the sum upon which the taxes must be levied, and collected, and such assessment shall be binding, effectual and lawful, and the value so fixed by the assessor shall not be reduced by the county board of equalization, but is subject to review by action brought in the superior court therefor.

All information derived from any examination of the books and accounts made pursuant to this chapter by the assessor, or anyone acting for him or representing him, shall be deemed to be and held as confidential communications not to be communicated to any other person by the person making such examination, or anyone to whom the knowledge of such examination or facts therein disclosed shall come; except when it becomes necessary as the part of the performance of the public duty of such person to disclose the same in any proceeding affecting the validity of said assessment or taxation, or for the prosecution for perjury of the person required to make the statement mentioned in this chapter. Any person or officer making such disclosures or violating such confidence, except as herein provided, shall be deemed guilty of a felony, and upon conviction thereof shall be removed from office and punished as in case of other felonies. [L. '21, p. 403, § 6.]

§ 11156. Failure to Furnish Statement.

If any person, corporation or association, engaged in mining as mentioned in this chapter, refuses or neglects to make and deliver to the assessor of the county where the mines are located, the statement mentioned in this chapter, such assessor must list the amount of said tax in the manner provided by the law for the assessment of other property where no statement is furnished. [L. '21, p. 405, § 7.]

§ 11157. Assessment-book.

The assessor must prepare at the time of the preparation of the general assessment-book, another assessment-book called the "Assessment-book of the Net Profits of Mines," alphabetically arranged, in which must be specified in separate columns and under appropriate heads:

1. The name of the owner or owners of the mines;
2. The name, description and location of the mine;

3. The number of tons extracted during the year;
 4. The gross yield or value in dollars and cents;
 5. The actual cost of extracting the same from the mine;
 6. The actual cost of transportation to the place of reduction or sale;
 7. The actual cost of reduction or sale;
 8. The cost of construction of betterments and repairs of mines and
 9. The net profits in dollars;
- reduction works during the year;
10. The total amount of taxes. [L. '21, p. 405, § 8.]

§ 11158. Laws Applicable.

The duties of the assessor, county auditor, state board of equalization, and the county board of equalization, as to the assessment of the net profits of mines, the statements and returns to be made, the equalization thereof, and other official acts, are the same as those provided by the laws of the state for the assessment of other property. [L. '21, p. 405, § 9.]

§ 11159. Rate of Assessment—Collection.

All property herein specified to be taxed shall be assessed at the same rate as is other property in the county where said property is situated. The taxes mentioned herein must be collected and payment thereof enforced in the same manner as the collection and enforcement of other taxes are provided for by law and every such tax is a lien upon the mine or mining claim or where the net profits thereof are the product of a group of mining claims operated by the same person or persons or corporation shall be a lien upon all of the mining claims included in said group. Said lien attaches at the same time as is provided for the attachment of the lien of taxes upon other property in this state and the sale thereof for delinquent taxes shall be made in the same manner as is provided by law for the sale of real estate: Provided, that on unpatented mining claims only the surface improvements thereon shall be assessed and only such surface improvements can be subjected to the lien of said taxes and such surface improvements on unpatented mining claims shall be sold in the same manner as is provided for the sale of personal property for taxes. [L. '21, p. 405, § 10.]

CHAPTER V.

ASSESSMENT OF RAILROADS.

§ 11160. [9141.] Tax Commission to Assess Operating Property of Railroads.

The state board of tax commissioners shall make an annual assessment of the operating property of all railroad companies within this state, for the purpose of levying and collecting taxes as hereinafter provided. [L. '07, p. 132, § 1.]

L. '83, pp. 64—66, tax on gross earnings of railroads, amended by L. '86, p. 95; repealed L. '88, p. 191. Cf. L. '88, p. 220.

See supra, § 10893, state tax commission abolished.

See supra, § 10811, duties devolve upon director of taxation.

Cited in 63 Wash. 538, 544; 75 Wash. 74, 77, 78, 91; 82 Wash. 353; 84 Wash. 517, 529; 93 Wash. 93; 96; 98 Wash. 220, 224.

Railroads — Earnings or Receipts: See Remington's Digest, Tax., §§ 31, 32, 71; Columbia & P. S. R. Co. v. Chilberg, 6 Wash. 612, 34 Pac. 163.

§ 32. — **Rolling Stock and Operating Property:** Northern Pac. R. Co. v. State, 84 Wash. 510, 147 Pac. 45, Ann. Cas. 1916E, 1166; Canadian Pac. R. Co. v. King County, 90 Wash. 88, 155 Pac. 416.

§ 71. **Railroads — In General:** Great Northern R. Co. v. Snohomish County, 48 Wash. 478, 93 Pac. 924; State ex rel. Oregon R. & Nav. Co. v. Olausen, 63 Wash. 535, 116 Pac. 7; Spokane & Inland Empire R. Co. v. Spokane County, 75 Wash. 72, 134 Pac. 688; Northern Pac. R. Co. v. State, 84 Wash. 510, 147 Pac. 45, Ann. Cas. 1916E, 1166; Northern Pac. R. Co. v. King County, 93 Wash. 89, 160 Pac. 8; Oregon-Washington R. & Nav. Co. v. Thurston County, 98 Wash. 218, 167 Pac. 930.

§ 11161. [9142.] Terms Defined.

For the purposes of this chapter, the following provisions and definitions are made:

1. The term "board" in this chapter, without other designation means the state board of tax commissioners.

2. Any person, association, company or corporation, owning or operating a railroad in this state, or owning or operating any station, depot, terminal or bridge for railroad purposes, as owner or lessee or otherwise, shall be deemed a railroad company within the meaning of this chapter.

3. The term "property of the railroad company" as used in this chapter, shall include all franchises, right of way, roadbed, tracks, terminals, rolling-stock equipment and all other real and personal property of such company, used or employed in the operation of the railroad, or in conducting its business, and shall include all title and interest in such property, as owner, lessee or otherwise. Real estate not adjoining its tracks, stations or terminals, and real estate not used in operating the railroad, is excepted, and shall be assessed in the same manner as like property of individuals.

4. The railway company operating a railroad in this state shall be the representative of every title and interest in the property of the railroad company, as owner, lessee or otherwise, and notice to the operating company shall be notice to all interests in the railroad property, for the purpose of taxation. The assessment of the property of the railroad company in the name of the owner, lessee or operating company, shall be deemed and held an assessment of all the title and interest in such property of every kind and nature.

5. The term "general property of the state" shall be deemed to include all the real and personal property appearing upon the assessment-rolls and tax-rolls throughout the entire state, upon which the state, county and local taxes are levied and collected.

6. The word "railroad" or words "railroad company," wherever they occur in this chapter, shall be considered, for all purposes of assessment and taxation, as including every kind of street railway, suburban railroad, or interurban railroad, person, firm, association, company or corporation, whether its line of railroad be maintained either at the surface,

or above or below the surface of the earth, or by whatever power its vehicles are transported. [L. '07, p. 132, § 2.]

"This chapter" herein refers to the act of '07, Chapter IV.

See notes to § 11160.

Cited in 90 Wash. 45; 93 Wash. 93—95, 97.

§ 11162. [9143.] Powers of Tax Commission—Witnesses.

The board shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of the state. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, towns, cities, villages and assessment districts, and the officers thereof shall, in form prescribed by said board, make returns to it of all the information called for. Said board shall have the power, by a summons signed by a member of said board, and served in a like manner as a subpoena issued from courts of record, to compel witnesses to appear and give evidence, and to produce books and papers. Any member of the board or the secretary thereof, is authorized to administer oaths to witnesses. The attendance of any witness may be compelled by attachment issued out of any superior court upon application to said court by any member of said board, upon a proper showing that such witness has been duly served with a summons, and has refused to appear before the said board. In case of the refusal of a witness to produce books, papers, documents or accounts, or to give evidence on matters material to the hearing, said board or any member thereof, may institute proceedings in the proper superior court, to compel such witness to testify, or to produce such books or papers, and to punish him for the refusal. All summons and process issued by such board shall be served by the sheriff of the proper county, and such service certified by him to said board, without any compensation therefor. Persons appearing before said board in obedience to a summons, shall, in the discretion of the board, receive the same compensation as witnesses in the superior court, to be audited by the state auditor, on the certificate of said board. The records, books, accounts and papers of any person, association or corporation owning or operating railroad property to be assessed, shall be subject to visitation, investigation and examination by said board. [L. '07, p. 133, § 3.]

See notes to § 11160.

See notes to § 11088, power of tax commission to fix county assessment.

§ 11163. [9144.] Depositions.

The board, in any matter material to the valuation, assessment or taxation of the property of railroad companies, may cause the deposition of witnesses residing without the state or absent therefrom, to be taken upon notice to the railroad company interested, in like manner as the deposition of witnesses are taken in civil actions in the superior court. [L. '07, p. 134, § 4.]

See notes to § 11160.

§ 11164. [9145.] Report of Company—Contents.

Every railroad company, operating in this state shall, between the first day of January and the first day of April in each year, under the oath of the president or other chief officer, and the secretary, treasurer, auditor or superintendent, of such company, make and file with the board, in such form as the board may prescribe, reports containing the following facts:

- (1) The name of the company.
- (2) The nature of the company, whether a person, association, company or corporation, and under the laws of what state or country organized, the date of original organization, date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same.
- (3) The location of its principal office.
- (4) The place where its books, papers and accounts are kept.
- (5) The name and postoffice address of the president, secretary, treasurer, auditor, superintendent, general manager, counsel, directors and all other general officers.
- (6) The name and postoffice address of the chief officer or managing agent of the railroad company in the state of Washington, and of all other general officers residing in this state.
- (7) The total number of shares of capital stock.
- (8) The par value of the shares of capital stock, for the whole system, showing: (1) Amount authorized; (2) amount issued; (3) amount outstanding; (4) the dividends paid thereon.
- (9) The market value of the shares of capital stock for the whole system, on the dates and for the periods the board may request or specify.
- (10) If such capital stock has no market value, the actual value on the dates and for the periods designated by the said board.
- (11) The funded debt of the railroad company for the whole system, and a detailed statement of all series of bonds, debentures and other securities, forming part of the funded debt, at par value, with date of issue, date of maturity, rate of interest, and interest paid.
- (12) The market value of each series of funded debt for the whole system, on the dates and for the periods designated by said board; and if the whole, or a part, of such funded debt has no market value, then the actual value for such periods and such dates as the board may specify.
- (13) Such a general description of the real property of the railroad company, owned or operated in the state of Washington as would be sufficient in a conveyance thereof, under a judicial decree directing a sale for taxes, to vest in the grantee all title and interest in and to said property.
- (14) A like description of the personal property, including moneys and credits, held by the company as a whole system, and also the part thereof apportioned to the system in this state.
- (15) A statement in detail of all capital stock and bonds or other securities of such railroad company, owned by or held in trust for the company, and the capital stock, bonds, and other securities of other

persons, companies or corporations, owned by or held in trust for it, and the par value, and the market or actual value of the same.

(16) The whole length of the railroad system operated by the company, and the length of the line in this state, whether operated as owner, lessee or otherwise. The length of the time owned and the length of the line operated for the whole system in this state shall be separately reported.

(17) The entire gross earnings of the railroad company from operation, income from operation, and income from other sources for the whole system, and in this state, and the disposition made from such income.

(18) The entire gross earnings of such company in the state of Washington, for each and every month, for each calendar year, ending on the thirty-first day of December.

(19) The annual reports of the board of directors, or other officers to the stockholders of the company, duplicate of the annual reports made to the interstate commerce commission, to the railway commission in this state, and to the railway commissioners or state officers or boards of other states in or through which the line of said railroad is operated.

(20) Such other facts and information as said board may require, in the form of returns prescribed by it. Blanks for making the above reports shall be furnished to such companies by said board except for the copies of the reports required under the provisions of subdivision nineteen of this section. In case any company refuses or neglects to make the reports provided for by this chapter, or refuses or neglects to furnish any information requested, the board shall inform itself the best it may on the matters necessary to be known, in order to discharge its duties with respect to the valuation and assessment of the property of such company. [L. '07, p. 134, § 5.]

"This chapter": See note to § 11161.

See notes to § 11160.

Cited in 82 Wash. 355.

§ 11165. [9146.] Failure to Report, Effect of.

If any railroad company or its officers or agents, shall refuse or neglect to make any reports required by this chapter, or said board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by said board, or shall refuse or neglect to appear before the board in obedience to a summons, such company shall be estopped to question or impeach the action or determinations of the board upon any grounds not affecting the substantial justice of the tax. [L. '07, p. 136, § 6.]

See notes to § 11160.

§ 11166. [9147.] Hearings.

The board, on or before the first day of March and the first day of June, in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state. Every such company shall be en-

titled on its own motion, to a hearing and to present evidence before such board, at any time between the first day of April and the first day of May, relating to the value of the property of such company, or to the value of the general property in the state. On request in writing for such hearing or presentation, the board shall appoint a time and place therefor, within the period aforesaid, the same to be conducted in such manner as the board shall direct. Such hearing shall not impair or affect the right to a further hearing before the state board of equalization, as hereinafter provided. The value of property of railroads for assessment shall be made as of the same time, and in like manner, as the value of the general property of the state, is ascertained and determined. [L. '07, p. 137, § 7.]

See notes to § 11160.

Cited in 75 Wash. 79; 98 Wash. 225.

§ 11167. [9148.] Assessment-roll.

The board shall prepare assessment-rolls and place thereon, after the name of each railroad company assessed, the general description of the property of such railroad, which shall include its real estate, right of way, tracks, stations, terminals, appurtenances, rolling stock, equipment, franchises and all other real and personal property of said company, which shall be deemed and held to include the entire property and franchises of such railroad company within the state, and all title and interest therein. For the purpose of determining the true cash value of the property of each company, the board may, if deemed necessary, view and inspect the property of such company, and shall consider the reports filed in compliance with this act, and the reports and returns of the company filed in the office of any officer of this state, and such other evidence or information as may have been taken or obtained bearing upon the value of the property of the railroad company assessed. In case of railroad companies which own or operate railroads lying partly within and partly without the state, the said board shall only value and assess the property within this state. In determining the value of the portion within the state, the board shall take into consideration the value of the entire system, the mileage of the whole system, and of the part within this state, together with such other information, facts and circumstances as will enable the board to make a substantially just and correct determination. When the value of the property of the railroad company within this state shall have been ascertained and determined, the amount thereof shall be entered upon said assessment-rolls, opposite the name of the company, and shall be and constitute the value of the entire property of such railroad company within this state, for the levy of taxes thereon, subject to revision and correction by the state board of equalization as hereinafter provided. Upon the completion of such assessment, the board shall give notice by mail to each railroad company assessed, of the amount of its assessment as entered upon such rolls. [L. '07, p. 137, § 8.]

See notes to § 11160.

Cited in 84 Wash. 529, 530; 93 Wash. 96; 98 Wash. 225.

Valuation of railroad property for purpose of taxation. *Ann. Cas.* 1916E, 1180, 1196, 1198, 1201; *Ann. Cas.* 1917E, 110.

Propriety of using mileage basis in assessing value of franchise of common carrier. *Ann. Cas.* 1914B, 199.

Situs of railroad rolling stock for tax purposes. 10 *Ann. Cas.* 355; 69 *L. R. A.* 445.

§ 11168. [9149.] Sessions of Tax Commission.

In making the investigation and holding the hearings provided for in this chapter, the board may hold its sessions at such times and in such places throughout the state as it may deem proper, or necessary for the convenient performance of their duties, and may adjourn from time to time and from place to place. [L. '07, p. 138, § 9.]

See notes to § 11160.

"This chapter": See note to § 11161.

§ 11169. [9150.] Equalization of Assessment.

The assessment-rolls of railroad companies shall, by said board of tax commissioners, be submitted to the state board of equalization at its annual meeting held for the purpose of equalizing the assessed valuation of the taxable property of the state; and any railroad company interested shall have the right to appear and be heard as to the assessment of the property of such company, and as to the value and assessment of the general property of the state, and the said board of equalization may, on application or of its own motion, correct the valuation or assessment of the property of such company, in such manner as may in its judgment make the valuation thereof just and relatively equal with the valuation of the general property of the state. The assessed valuation of the property of the railroad company as it appears on such rolls, shall not be increased without notice to the company, by registered letter, that such increase is contemplated, and fixing a time for a hearing in relation thereto. [L. '07, p. 138, § 10.]

See notes to § 11160.

See supra, § 10763, duties of board devolve upon state equalization committee.

See supra, § 10893, state equalization board abolished.

Cited in 75 Wash. 80.

§ 11170. [9151.*] Apportionment of Value to Counties, Cities, etc.

On the completion of the equalization of the property of the railroad companies and other property in the state, by the state board of equalization it shall be the duty of the state board of equalization, to apportion the value of the operating properties of such railroad, to the county or counties through or into which the lines thereof may extend, according to the classification and value thereof, in such proportion to the entire value thereof, as the length of the line in each county may bear to the entire length of line within the state, which valuation, together with a description of the railroad property assessed, giving the name of the company and the length of line in said county, shall be certified by said board, to the county assessor of the proper county. The county assessor shall in like manner distribute the value so certified to him, to the several

cities, towns, road districts, school districts and other taxing districts, in his county, entitled to a proportionate value of the operating property of such railroad; and each assessment so apportioned shall be placed upon the tax-rolls of said county, and the taxes extended against the same, as against other property in said county, cities, towns, school, road, and other taxing districts. [L. '17, p. 73, § 1; L. '07, p. 139, § 11.]

See notes to § 11169.

Cited in 75 Wash. 76, 95; 82 Wash. 354.

A "line" of railroad owned and operated by one railroad company, but leased to another railroad company under a joint user contract, is not subject to apportionment for taxation against the lessee as

well as the lessor: State ex rel. Hellar v. Jackson, 82 Wash. 351, 144 Pac. 48.

Taxation where railroad right of way and roadbed situated in more than one taxing district. 18 Ann. Cas. 716.

§ 11171. [9152.] Assessments—Realty and Personalty.

In making the assessments of the operating property of railroads, and in the apportionment of the values and the taxation thereof, as hereinbefore provided, all land occupied and claimed exclusively as the right of way for railroads, with all the tracks, and substructures and superstructures which support the same, together with all sidetracks, second tracks, turn-outs, stationhouses, depots, roundhouses, machine-shops, or other buildings belonging to the road used in the operation thereof, without separating the same into land and improvements, shall be assessed and taxed as real property. And the rolling stock and other movable property belonging to any railroad company shall be considered as personal property and shall be assessed and taxed as such: Provided, that all of the operating property of street railroads shall be assessed and taxed as personal property. [L. '11, p. 62, § 1. Cf. L. '07, p. 139, § 12.]

See notes to § 11169.

Cited in 82 Wash. 353, 355; 90 Wash. 46, 47; 93 Wash. 93—95.

CHAPTER VI.

PRIVILEGE TAX ON PRIVATE CAR AND EXPRESS COMPANIES.

§ 11172. [9153.] Private Car Companies Defined.

Any person or persons, joint stock company or corporations, wherever organized or incorporated, engaged in the business of operating or running cars for the purpose of transporting any articles of merchandise, during the transportation thereof on or over any railroad line or lines in whole or in part within this state, such line or lines not being owned or leased by such person or persons, joint stock company or corporation, shall be deemed a private car company within the meaning of this act. [L. '07, p. 46, § 1.]

"Act" in this section refers to §§ 11172—11179.

§ 11173. [9154.] Annual Statement to Tax Commission, Contents of.

Every private car company, as defined in section 11172, doing business in this state, shall annually, between the first and thirtieth day of April, after passage of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer,

superintendent or chief officer in this state, of such association, or corporation, if an association or corporation, make and file with the state board of tax commissioners a statement, in such form as the board may prescribe, containing the following facts:

1st. The name of the person, or persons, association or corporation.

2nd. Under the laws of what state or country organized.

3rd. The location of its principal office.

4th. The name and postoffice address of the president, secretary, auditor, treasurer, superintendent and general manager.

5th. The name and postoffice address of the chief officer, or managing agent of the company in this state.

6th. The entire receipts (including all sums earned or charged, whether actually received or not) for business done by such company within this state including its proportion of gross receipts for business done by such company within the state in connection with other companies.

7th. Such other facts and information as the said board may require in the form of return prescribed by it. Blanks for making the above statement shall be prepared and furnished any private car company by the said board. [L. '07, p. 46, § 2.]

"Act": See note to § 11172.

See notes to § 11160.

§ 11174. [9155.] Tax Commissioners to Ascertain Gross Receipts.

The state board of tax commissioners shall proceed to ascertain and determine, on or before the first Monday in July, the entire gross receipts of said private car companies for business done within the state of Washington for the year next preceding the first day of April, and the amount so ascertained by the said board shall, in such instances, be held and deemed to be the gross receipts of such private car company for business done within the state of Washington, for the year under consideration. [L. '07, p. 47, § 3.]

See notes to § 11160.

§ 11175. [9156.] Hearings.

The board may adjourn from time to time until the business before it is finally disposed of. In case of failure or refusal of any private car company to make the statement required by law, or furnish the board any information requested by it, the board shall inform itself as best it may on the matters necessary to be known in order to discharge its duty. And at any time after the meeting of the board on the first Monday in June, and before the gross receipts of any private car company for business done within the state of Washington are determined, any person, company or corporation interested shall have the right, on written application to appear before the board and be heard in the matter of such determination. After the determination of the amount of the gross receipts of any private car company for business done in the state of Washington and before the certification of the state board of tax commissioners of such amount, the board may, on the application of any person, company or corporation interested, or on its own motion, review

and correct its findings in such manner as may seem to it to be just and proper. [L. '07, p. 47, § 4.]

See notes to § 11160.

§ 11176. [9157.] Failure to File Statement—Penalty.

In case any private car company shall refuse, fail or neglect to make and file the statement or schedule, as provided for, in this act, such company shall be subject to a penalty of five hundred dollars (\$500) and an additional penalty of one hundred dollars (\$100) for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state, and on collection, paid into the state treasury to the credit of the general fund of the state. The attorney general, on request of the state board of tax commissioners, shall institute such action against any such person or persons, joint stock company or corporation so delinquent in any court of competent jurisdiction in this state. [L. '07, p. 48, § 5.]

See notes to § 11160.

"Act": See note to § 11172, *supra*.

§ 11177. [9158.] Production of Books—Penalty for Refusal to Testify.

The state board of tax commissioners shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent, or other officer or employee, or agent, of any private car company or any person, joint stock company or corporation, engaged in the private car business, to attend before the board, and bring with him for the inspection of the board, any books or papers, of such person or persons, joint stock company or corporation, in his possession, or under his control, and to testify under oath, touching any matter relating to the organization or business of such person or persons, joint stock company or corporation. Any member of the board is authorized and empowered to administer such oath. Any officer, employee or agent who shall refuse to attend before the board, when requested so to do, or shall refuse to bring with him and submit for the inspection of the board any books or papers in his possession, custody or control, or shall refuse to answer any questions put to him by the board or any member thereof, touching the organization or business of such person, persons, joint stock company or corporation, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined, not more than five hundred dollars (\$500), nor less than one hundred dollars (\$100). [L. '07, p. 48, § 6.]

See notes to § 11160.

§ 11178. [9159.] Tax, Seven Per Cent on Gross Receipts.

The state board of tax commissioners shall on the first Monday in August, annually, enter the amount of gross receipts of private car companies doing business in this state, for the year then next preceding the first day of April, as determined as provided for in section 11174 in a book provided for that purpose. It shall be the duty of the state treasurer, annually to collect from each such private car company, doing business in this state, a sum in the nature of an excise or privilege

- tax, to be computed by taking seven per centum of the amount fixed by the state board of tax commissioners as the gross receipts of such private car company for business done within the state of Washington for the year next preceding the first day of April, as determined and certified by the state board of tax commissioners: Provided, nothing contained in this act shall exempt or relieve any private car company from the assessment and taxation of their tangible property in the manner authorized and provided by law. All taxes collected under the provisions of this act shall be credited to the state general fund. [L. '07, p. 49, § 7.]

See notes to § 11160.

"Act": See note to § 11172, *supra*.

§ 11179. [9160.] Collection.

If any private car company fails or refuses to pay the said tax as provided for in this act before the thirtieth day of September, annually, the state treasurer shall proceed to collect the tax, together with interest, at the rate of fifteen per centum per annum, by suit instituted by the attorney general, whose duty it shall be, upon request of the state treasurer, or upon request of the state board of tax commissioners, to prosecute any and all proceedings for the collection of such tax. [L. '07, p. 49, § 8.]

"Act": See note to § 11172, *supra*.

§ 11180. [9161.] Express Companies Defined.

Any person or persons, joint stock association or corporation, wherever organized or incorporated, engaged in the business of conveying to, from or through this state, or any part thereof, money, packages, gold, silver plate or any articles by express service as distinguished from the ordinary freight lines of transportation of merchandise and property in this state, shall be deemed to be an express company. [L. '07, p. 79, § 1.]

Cited in 80 Wash. 310—312, 326; 81 Wash. 701.

(overruled); State v. Northern Express Co., 80 Wash. 309, 141 Pac. 757.

Corporate Franchises: See Remington's Digest, Tax., § 6; State v. Northern Express Co., 76 Wash. 636, 136 Pac. 1160

Taxation of express companies. 57 L. R. A. 64; 60 L. R. A. 687.

§ 11181. [9162.] Annual Statement.

Every express company, as defined in section 11180, doing business in this state, shall annually, between the first and thirtieth day of April, after passage of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer, superintendent or chief officer in this state, of such association or corporation, if an association or corporation, make and file with the state board of tax commissioners a statement, in such form as the board may prescribe, containing the following facts:

- 1st. The name of the person, or persons, association or corporation.
- 2d. Under the laws of what state or country organized.
- 3d. The location of its principal office.

4th. The name and postoffice address of the president, secretary, auditor, treasurer, superintendent and general manager.

5th. The name and postoffice address of the chief officer, or managing agent of the company in this state.

6th. The entire receipts (including all sums earned or charged, whether actually received or not), for business done within this state, including its proportion of gross receipts for business done by such company within this state in connection with other companies.

7th. Such other facts and information as the said board may require in the form of return prescribed by it. Blanks for making the above statement shall be prepared and furnished any express company by the said board. [L. '07, p. 79, § 2.]

See notes to § 11160.

"Act" in this section refers to §§ 11180—11187.

Cited in 76 Wash. 636, 637.

§ 11182. [9163.] Tax Commissioners to Ascertain Gross Receipts.

The state board of tax commissioners shall proceed to ascertain and determine, on or before the first Monday in July, the entire gross receipts of each of said express companies for business done within the state of Washington for the year next preceding the first day of April, and the amount so ascertained shall, in such instances, be held and deemed to be the gross receipts of such express company for business done within the state of Washington for the year under consideration. [L. '07, p. 80, § 3.]

See notes to § 11160.

Cited in 76 Wash. 637.

§ 11183. [9164.] Procedure, When Statement not Furnished—Hearings.

The board may adjourn from time to time until the business before it is finally disposed of. In case of failure or refusal of any express company to make the statement required by law, or furnish the board any information requested by it, the board shall inform itself as best it may on the matters necessary to be known in order to discharge its duty. And at any time after the meeting of the board on the first Monday in June, and before the gross receipts of any express company for business done within the state of Washington are determined, any person, company or corporation interested shall have the right, on written application, to appear before the board and be heard in the matter of such determination. After the determination of the amount of the gross receipts of any express company for business done in the state of Washington and before the certification of the state board of tax commissioners of such amount, the board may, on the application of any person, company or corporation interested, or on its own motion, review and correct its findings, in such manner as may seem to it to be just and proper. [L. '07, p. 80, § 4.]

See notes to § 11160.

§ 11184. [9165.] Penalty for Failure to File Statement.

In case any express company shall refuse, fail or neglect to make and file the statement or schedule, as provided for in this act, such company shall be subject to a penalty of five hundred dollars (\$500), and an additional penalty of one hundred dollars (\$100) for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state, and, on collection, paid into the state treasury to the credit of the general fund of the state. The attorney general on request of the state board of tax commissioners, shall institute such action against any such person or persons, joint stock company or corporation so delinquent in any court of competent jurisdiction in this state. [L. '07, p. 80, § 5.]

See notes to § 11160.

"Act" refers to §§ 11180—11187.

§ 11185. [9166.] Witnesses.

The state board of tax commissioners shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent, or other officer, or employee, or agent, of any express company, or any person, joint stock company, or corporation, engaged in the express business, to attend before the board, and bring with him for the inspection of the board, any books or papers, of such person or persons, joint stock company or corporation, in his possession, or under his control, and to testify under oath, touching any matter relating to the organization or business of such person or persons, joint stock company, or corporation. Any member of the board is authorized and empowered to administer oaths, any officer, employee or agent who shall refuse to attend before the board when requested so to do, or shall refuse to bring with him and submit for the inspection of the board, any books, records or papers in his possession, custody or control, or shall refuse to answer any questions put to him by the board or any member thereof, touching the organization or business of such person, persons, joint stock company or corporation, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined, not more than five hundred dollars (\$500) nor less than one hundred dollars (\$100). [L. '07, p. 81, § 6.]

See notes to § 11160.

§ 11186. [9167.] Tax, Five Per Cent on Gross Receipts.

The state board of tax commissioners shall on the first Monday in August, annually, enter the amount of gross receipts of express companies doing business in this state, for the year then next preceding the first day of April, as determined as provided for in section 11182 in a book provided for that purpose. It shall be the duty of the state treasurer, annually, to collect from each such express company, doing business in this state, a sum in the nature of an excise or privilege tax, to be computed by taking five per centum of the amount fixed by the state board of tax commissioners as the gross receipts of such express company for business done within the state of Washington for the year next preceding the first day of April, as determined and certified by the state board

of tax commissioners: Provided, nothing contained in this act shall exempt or relieve any express company from the assessment and taxation of their tangible property in the manner authorized and provided by law. All taxes collected under the provisions of this act shall be credited to the state general fund. [L. '07, p. 81, § 7.]

See notes to § 11160.

"Act" in this section refers to §§ 11180—11187.

Cited in 76 Wash. 638.

§ 11187. [9168.] Collection.

If any express company fails or refuses to pay the said tax as provided for in section 11186 before the thirtieth day of September, annually, the state treasurer shall proceed to collect the tax, together with interest, at the rate of fifteen per centum per annum, by suit instituted by the attorney general, whose duty it shall be, upon the request of the state treasurer, or upon request of the state board of tax commissioners, to prosecute any and all proceedings for the collection of such tax. [L. '07, p. 82, § 8.]

Cited in 76 Wash. 636—638; 80 Wash. 310—312, 326; 81 Wash. 701.

CHAPTER VII.

ASSESSMENT OF TELEGRAPH AND TELEPHONE COMPANIES, ELECTRIC LIGHT LINES, ETC.

§ 11188. [9169.] List of Telephone, etc., Companies.

Any person, company, power company or corporation using or operating a [telegraph], telephone, electric line or electric light line in this state shall annually, in the month of March, return to the county assessor a map and a schedule or statement, under oath, as follows:—

First: The amount of capital stock authorized and the number of shares into which said capital stock is divided;

Second: The amount of capital stock paid up;

Third: The market value, or if no market value, then the actual value, of, the shares of stock;

Fourth: The total amount of all indebtedness, except current expenses for operating the line;

Fifth: The length of the line operated in each county, and the total length in the state;

Sixth: The total assessed valuation of its tangible property in this state.

Such schedule shall give the date, character, extent and value of such franchise, the gross income, the number of poles per mile, the number of wires, and every electric light company shall give the kind of lights and the number of each kind supplied, the location and value of the electric plant, whether the ground is owned or leased, and if leased, the owner's name, and the value of the plant separate from such ground. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the state auditor, and with reference to amounts and values on the first day of March of the year for which the return

is made, and it shall be the duty of the county assessor to transmit a copy of such schedule to the state auditor on or before the first Monday in July of each year. All property, real and personal, owned by such person, company or corporation and situated in this state must be listed and assessed for taxation and shall be subject to the same levies as the property of individuals and the same rules that govern other companies and corporations. [Cf. L. '93, p. 339, § 40; L. '97, p. 154, § 40.]

Superseded as to telegraph companies, by § 11190 et seq.

Telegraph and Telephone Companies:
See Remington's Digest, Tax., § 33; Western Union Tel. Co. v. Lakin, 53 Wash. 326, 101 Pac. 1094, 17 Ann. Cas. 718.

state commerce. **Ann. Cas.** 1914A, 987.

Situs for purpose of taxation of rolling stock of electric railway. 10 **Ann. Cas.** 355.

Statute imposing tax on telegraph company as interference with inter-

§ 11189. [9170.] Penalty for False Statement, etc.

If any person or corporation shall give a false or fraudulent list, schedule or statement required by this chapter, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a penalty of not less than ten dollars nor more than two thousand dollars, to be recovered in any proper form of action in the name of the state of Washington on the complaint of any person, such fine, when collected, to be paid into the county treasury to the credit of the general fund. [L. '93, p. 339, § 41; L. '97, p. 154, § 41.]

"This chapter": See note to § 11099.

§ 11190. [9171.] Telegraph Companies—Tax Commissioners to Assess Property.

The state board of tax commissioners shall make an annual assessment of the property of all telegraph companies within this state for the purpose of levying taxes thereon for state, county and other purposes. [L. '07, p. 243, § 1.]

See notes to § 11160.

§ 11191. [9172.] Definitions.

For the purposes of this act the following provisions and definitions are made:

(1) The term "board" in this act, without other designation, means the state board of tax commissioners.

(2) Any person, copartnership, association, company or corporation owning or operating any telegraph or cable line in this state with appliances for the transmission of messages and engaged in the business of furnishing telegraph service for compensation as owner, lessee or otherwise shall be deemed, held and known as a telegraph company.

(3) The word "company" in this act without other designation or qualification shall mean and include any telegraph company as herein defined. The words "property of a company" without other designation or qualification shall mean and include the property of any telegraph company.

(4) The term "property of a company" or "property of the company" as used in this act shall include all franchises, right of way, poles, wires, cables, devices, appliances, instruments, equipment and all other real and personal property of such company used or employed in the operation of the company or in conducting its business and shall include all title and interest in such property as owner, lessee or otherwise.

(5) The company operating a line or lines in this state with all property and appliances connected and used therewith in the service, shall be the representative of every title and interest in the property of the company as owner, lessee or otherwise, and notice to the operating company shall be notice to all interests in the property for the purpose of taxation. The assessment and taxation of the property of a company in the name of the owner, lessee or operating company shall be deemed and held an assessment and taxation of all the title and interest in such property of every kind or nature.

(6) The term "general property of the state" shall be deemed to include all real and personal property appearing upon the assessment-rolls and tax-rolls throughout the state upon which state, county and local taxes are levied and collected with such changes and corrections made by the board as hereinafter provided. [L. '07, p. 244, § 2.]

See notes to § 11160.

"Act" in this section refers to §§ 11190—11200.

§ 11192. [9173.] Powers of Commission—Attendance of Witness.

The board shall have access to all books, papers, documents, statements or accounts on file, or of record in any of the departments of the state. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, towns, cities, villages and assessment districts, and the officers thereof shall in form prescribed by said board make returns to it of all information which may be called for. Said board shall have the power, by a summons signed by a member of said board and served in like manner as a subpoena issued from courts of record, to compel witnesses to attend, give evidence and to produce books and papers. Any member of the board, or the secretary thereof, is authorized to administer the oath to witnesses. The attendance of any witness may be compelled by attachment issued by any superior court upon a proper showing that such witness has been duly served with the summons, and has refused to appear before said board. In case of the refusal of a witness to produce books, papers, documents or accounts, or to give evidence on matters material to the hearing, said board, or any member thereof, may institute proceedings in a proper superior court, to compel such witness to testify, or to produce such books or papers, and to punish him for the refusal. All summons and process issued by such board shall be served by the sheriff of the proper county and such services certified by him to said board, without any compensation therefor. Persons appearing before said board, in obedience to a summons, shall, in the discretion of the board, receive the same compensation as witnesses in the superior court, to be audited by the state auditor, on the certificate of said board. The records, books, accounts and papers of

any person, association or corporation, owning or operating telegraph property to be assessed, shall be subject to visitation, investigation, and examination by said board, or by such person as it may designate. [L. '07, p. 245, § 3.]

See notes to § 11160.

§ 11193. [9174.] Depositions as to Valuations.

The board, in any matter material to the valuation, assessment or taxation of the property of a company, may cause the depositions of witnesses residing without the state or absent therefrom to be taken, upon notice to the company interested, in like mode as the depositions of witnesses are taken in civil actions pending in the superior court. [L. '07, p. 246, § 4.]

See notes to § 11160.

§ 11194. [9175.] Annual Report of Company—Contents.

Every company operating a telegraph line or lines, in this state, shall annually between the first day of January and the first day of April in each year, under the oath of the the president or other chief officer and the secretary, treasurer, auditor or superintendent of such company, make and file with the board in such form as said board may prescribe, reports containing the following facts:

(1) The name of the company.

(2) The nature of the company, whether a person, association, company or corporation, and under the laws of what state or country organized, the date of original organization, date of reorganization, consolidation or merger, with specific reference to laws authorizing the same.

(3) The location of its principal office.

(4) The name of the place where its books, papers and accounts are kept.

(5) The name and postoffice address of the president, secretary, treasurer, auditor, superintendent, general manager, counsel, directors and all other general officers.

(6) The name and postoffice address of the chief officer or managing agent of the company in Washington and all other general officers residing in the state.

(7) The total number of shares of capital stock.

(8) The par value of the shares of the capital stock for the whole system showing separately (1) Amount authorized. (2) Amount issued. (3) Amount outstanding. (4) Also the dividends paid thereon.

(9) The market value of the shares of capital stock for the whole system, on the dates and for the periods the board may request or specify, but the average market value as near as may be of said shares shall be given at least for one year ending the thirty-first day of December preceding.

(10) If such capital stock has no market value, the actual value on the dates and for the periods designated by said board.

(11) The funded debt of the company for the whole system, and a detailed statement of all series of bonds, debentures or other securities, forming a part of the funded debt at par value, with the date of issue, maturity, rate of interest and interest paid.

(12) The market value of each series of funded debt for the whole system on the dates and for the periods designated by said board, and if the whole or a part of such funded debt has no market value, then the actual value thereof for such dates and periods as said board may specify, but the average market value as near as may be of each series of funded debt shall be given at least for one year ending the thirty-first day of December preceding.

(13) Such general description of the real estate of the company owned or operated in Washington as would be sufficient in a conveyance thereof, under a judicial decree, directing a sale for taxes to vest in the grantee all title and interest in and to the said property.

(14) A like description of the personal property, including moneys and credits held by the company as a whole system and the part thereof apportioned to the line in Washington.

(15) A statement in detail of all capital stock, bonds or other securities of such company owned by, or held in trust, for the company and the capital stock, bonds, or securities, of other persons, companies or corporations owned by, or held in trust for it and the par value and the market or actual value of the same.

(16) The description and true value and assessed value of real estate within and without the state and the gross and net income therefrom if the company claims any deduction in the value of its property on account thereof.

(17) A detailed description of all capital stock, bonds, mortgages, securities, credits and other personal property, if any, with the value thereof, owned by the company which is not used or employed in the business and is claimed to be exempt in the value of its property for taxation under this act.

(18) Every such company shall also report:

(a) The whole length of the lines of poles, single wire of the entire system and separately in this state.

(b) The length of wire underground and on buildings of the entire system and in this state.

(c) The length of wire and cable submarine for the entire system and in this state.

(d) The number of miles of all wires and cables of the entire system and the miles of all wires and cables in this state.

(e) The number of offices for the entire system and the number of offices in this state.

(f) The number of messages received and transmitted for the entire system and the number received and transmitted in this state.

(19) The entire gross earnings of the company from operation, expenses of operation, net earnings from operation and the income from other sources for the whole system and in Washington and the disposition made of such net earnings and income.

(20) The annual report of the board of directors or other officers to the stockholders of the company.

(21) Such other facts or information as the company may deem material upon the question of the taxation of its property in this state.

(22) Such other facts and information as said board may reasonably require in form or returns prescribed by it.

(23) Any company, association or corporation owning all or a majority of the capital stock of the company operating in this state or having practical control of any such company may be required to make report of such facts and information specified in this section as may be deemed necessary by the board to a correct valuation and assessment of the property of such operating company.

Blanks for making the above reports shall be furnished to such companies by said board except for the copies of reports required under the provisions of subdivision 20 of this section. In case any company refuses or neglects to make the reports required by this act, or refuses or neglects to furnish any information requested, the board shall inform itself the best it may on the matters necessary to be known in order to discharge its duties with respect to the valuation and assessment of the property of such company. [L. '07, p. 246, § 5. Cf. L. '93, p. 339, § 40; L. '97, p. 154, § 40; Bal. Code, § 1696.]

"Act": See note to § 11191.

§ 11195. [9176.] Property Taxed as Personalty.

The property of a company as defined in section 11191, subject to taxation under the provisions of this act, is declared to be personal property and the place of assessment and taxation of such property is fixed at the capital of the state. [L. '07, p. 249, § 6.]

See notes to § 11160.

"Act": See note to § 11191.

§ 11196. [9177.] Failure to Report, Effect of.

If any company or its officers or agents shall refuse or neglect to make any reports required by this act or said board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts, or papers, when requested by said board, or shall refuse or neglect to appear before the board in obedience to a summons, such company shall be estopped to question or impeach the action or determination of the board, except upon satisfactory proof of fraud or mistake injurious to the company. No company shall be allowed in any action or proceeding to question the amount or valuation of its property as assessed by the board unless such company shall have made and filed with such board a full and complete report of the facts and information prescribed by section 11194, and called for by the board thereunder, provided the refusal or neglect of such company to file the report in time may on application of the company and for good cause shown be excused by the board on condition that such company shall make a full and complete report of all facts and information mentioned in said section 11194 within fifteen days after notice by mail of the amount of the preliminary

valuation of the property of such company and shall appear before the board before the time for the final hearing and make a full disclosure of all property liable to assessment and taxation under this act and show the value of such property to the satisfaction of the board. [L. '07, p. 249, § 7.]

See notes to § 11160.

"Act": See note to § 11191.

§ 11197. [9178.] Hearing—Assessment-roll, etc.

The board on or between the first day of April and the first day of July in each year, according to their best knowledge and judgment shall ascertain and determine the true cash value of the property of each company within the state. Every such company shall be entitled on its own motion to a preliminary hearing and to present evidence before such board at any time on or between the first and fifteenth days of June relating to the value of the property of such company, or to the value of the general property of the state. On request in writing for such hearing or presentation, the board shall appoint a time and place therefor within the period aforesaid; the same to be conducted in such manner as the board shall direct. Such preliminary hearing shall not impair or affect the right to the further hearing provided for in section 11200 [11199]. The value of the property of a company for assessment shall be made on the same basis and for the same period of time as near as may be as the value of the general property of the state is ascertained and determined. The board shall prepare an assessment-roll and place thereon after the name of each company assessed, the following general description of the property of such company, to wit: "Real estate, right of way, poles, wires, cables, devices, appliances, instruments, franchises and all other real and personal property of said company," which shall be deemed and held to include the entire property and franchises of such company within the state, and all title and interest therein. For the purpose of determining the true cash value of the property of each company, appearing on the assessment-roll, the board may, if deemed necessary, view and inspect the property of such company and shall consider the reports filed in compliance with this act, and the reports and returns of the company filed in the office of any officer of this state, and such other evidence or information as may have been taken or obtained bearing upon the true cash value of the property of the company assessed. In case the companies which own or operate lines lying partly within or partly without the state, the said board shall only value and assess the property within the state. In determining the value of the portion within the state the board may take into consideration the value of the entire system, the mileage of the whole system and of the part within this state, together with such other information, facts and circumstances as will enable the board to make a substantially just and correct determination. When the true cash value of the property of a company within this state shall have been ascertained and determined, the amount thereof shall be entered upon the assessment-roll opposite the name of the company and shall be, and constitute, the assessment of the entire property of such company within this state for the levy of taxes thereon, subject to review and correction,

as hereinafter provided. The board shall thereupon give notice by mail to each company assessed of the amount of its assessment as entered upon such roll. [L. '07, p. 250, § 8.]

"Act": See note to § 11191.

"Section 11200" substituted for "section 11"; intended to be section 10 [11199].

§ 11198. [9179.] Sessions.

In making the investigations and holding the hearings provided for in this act, the board may hold its sessions at such times and in such places throughout the state as it may deem proper, or necessary for the convenient performance of their duties, and may adjourn from time to time and from place to place. [L. '07, p. 251, § 9.]

"Act": See note to § 11191.

§ 11199. [9180.] Equalization of Assessment.

The assessment-rolls of telegraph companies shall, by said state board of tax commissioners, be submitted to the state board of equalization at its annual meeting held for the purpose of equalizing the assessment valuation of the taxable property of the state; and any telegraph company interested shall have the right to appear and be heard as to the assessment of the property of such company, and as to the value and assessment of the general property of the state, and the said board of equalization may, on application or of its own motion, correct the valuation or assessment of the property of such company, in such manner as may in its judgment make the valuation thereof just and relatively equal with the valuation of the general property of the state. The assessed valuation of the property of any telegraph company as it appears on such rolls, shall not be increased without notice to the company by registered letter, that such increase is contemplated, and fixing a time for a hearing in relation thereto. [L. '07, p. 251, § 10.]

See notes to §§ 11160 and 11169.

§ 11200. [9181.*] Apportionment to Counties, Cities, etc.

Upon the completion of the equalization of the property of the telegraph companies and other property in the state by the state board of equalization, it shall be the duty of the state board of equalization to apportion the value of the properties of such telegraph companies to the county or counties through or into which the lines thereof may extend according to the value thereof in such proportion to the entire value as the length of the line in each county may bear to the entire length of line within the state computed on a wire mileage basis, which valuation, together with a description of the property assessed, giving the name of the company, the length of line and wire mileage in said county, shall be certified by said board to the county assessor of the proper county. The county assessor shall in like manner distribute the value so certified by him to the several cities, towns, road districts, school districts, and other taxing districts in his county entitled to a proportionate value thereof, and each assessment so apportioned shall be placed upon the tax-rolls of said county, and the taxes extended against the same as against

other property in said county, cities, towns, school, road and other taxing districts. [L. '17, p. 74, § 1; L. '07, p. 252, § 11.]

See notes to §§ 11160 and 11169.

Place of taxation of telephone company lines, conduits, etc., situate

in more than one taxing district.
18 Ann. Cas. 717.

CHAPTER VIII.

INHERITANCE TAX.

§ 11201. [9182.*] Property Subject to Inheritance Tax.

All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritances of this or any other state, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant or sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the state, be subject to a tax as provided for in section 11202, after the payment of all debts owing by the decedent at the time of his death, the local and state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, monument or crypt, court costs, including cost of appraisement made for the purpose of assessing the inheritance tax, the fees of executors, administrators or trustees, reasonable attorney's fees, and family allowance not to exceed \$1,000, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county, and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid. [L. '17, p. 593, § 1; L. '01, p. 67, § 1; L. '07, p. 499, § 1.]

See supra, § 10878, duties devolve upon attorney general.

See supra, § 10893, state tax commission abolished.

Cited in 107 Wash. 426; 112 Wash. 322, 648—650; 113 Wash. 599.

LEGACY AND INHERITANCE TAXES:
See Remington's Digest, Tax., §§ 225—227.

§ 225. Nature and Power to Impose: State v. Clark, 30 Wash. 439, 71 Pac. 20.

§ 226. Statutory Provisions — Constitutionality: State v. Clark, 30 Wash. 439, 71 Pac. 20; White's Estate, In re, 42 Wash. 360, 84 Pac. 831.

§ 227. Persons Liable for Tax—In General: Lotzgesell's Estate, In re, 62 Wash. 352, 113 Pac. 1105.

This act was intended to tax the right to receive by inheritance as distinguished from a tax upon the property or the right

to transmit it; hence each legacy must be considered as a separate entity and taxed as such at the statutory rate: Corbin's Estate, In re, 107 Wash. 424, 181 Pac. 910, 7 A. L. R. 685.

Deduction as family allowance—Non-intervention will—Statutes: Ferrel's Estate, In re, 112 Wash. 231, 192 Pac. 10.

— Interest—Time from which interest runs: Lambrecht's Estate, In re, 112 Wash. 645, 192 Pac. 1018.

The provision that the deduction shall not be made unless allowed within the time allowed or ordered has no application in case of a nonintervention will: Lambrecht's Estate, In re, 112 Wash. 645, 192 Pac. 1018.

Constitutionality, construction and effect of legislative definition of gift or transfer in "contemplation of death." 4 **A. L. R.** 1523.

When transfer deemed to be one in contemplation of death within the meaning of the inheritance tax law. 7 **A. L. R.** 1028.

Whole estate or individual shares as basis of computation of inheritance tax. 7 **A. L. R.** 688; 11 **A. L. R.** 825.

Time as of which value of property is to be computed for purpose of estimating inheritance tax. 13 **A. L. R.** 127.

Personal property passing under mutual survivorship agreement as subject to succession tax. 3 **A. L. R.** 1640.

Community property as subject to inheritance tax. **Ann. Cas.** 1913D, 496; 20 **L. R. A. (N. S.)** 208; 39 **L. R. A. (N. S.)** 1107.

Deduction of federal estate tax before computing state inheritance tax. 7 **A. L. R.** 714; 16 **A. L. R.** 702.

Liability to succession tax of transfer made before death. 14 **Ann. Cas.** 109; **Ann. Cas.** 1915B, 1089.

§ 11202. [9183.*] Tax Graduated—Rates of Levy.

The inheritance tax shall be imposed on all estates subject to the operation of this act at the following rate:

If passing to or for the use of a father, mother, husband, wife, lineal descendant, adopted child or lineal descendant of an adopted child, the tax shall be one per centum of any value not exceeding fifty thousand dollars; two per centum of any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; three per centum of any value in excess of one hundred thousand dollars and not exceeding two hundred fifty thousand dollars; five per centum of any value in excess of two hundred fifty thousand dollars: Provided, however, that in the above cases, ten thousand dollars of the net value of any estate shall be exempt from such duty or tax.

If passing to or for the use of a sister, brother, uncle, aunt, nephew or niece, the tax shall be three per centum of any value not exceeding fifty thousand dollars; five per centum of any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; seven per centum of any value in excess of one hundred thousand dollars and not exceeding two hundred fifty thousand dollars; nine per centum of any value in excess of two hundred fifty thousand dollars.

If passing to or for the use of collateral heirs beyond the third degree of relationship or to strangers to the blood, the tax shall be six per centum of any value not exceeding fifty thousand dollars; nine per centum of any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; twelve per centum of any value in excess of one hundred thousand dollars and not exceeding two hundred fifty thousand dollars; fifteen per centum of any value in excess of two hundred fifty thousand dollars. [L. '17, p. 196, § 1; L. '11, p. 60, § 2. Cf. L. '01, p. 68, § 2; L. '07, p. 500, § 2.]

Cited in 58 Wash. 340; 107 Wash. 425, 426; 112 Wash. 234, 239.

Rem. & Bal. Code, section 9183, providing for an inheritance tax of twenty-five per cent on all sums passing to collateral relatives who are aliens not residing in the United States, which exceeds the tax upon relatives who are citizens of the United States, violated the treaty be-

tween Norway and Sweden and the United States, which provides that the subjects of the contracting parties may freely dispose of their goods and effects by testament and that their heirs in whatever place they shall reside shall receive the succession, exempt from all duty called "droit de detraction" on the part of the government of the two states respectively:

Stixrud's Estate, In re, 58 Wash. 339, 109 Pac. 343, Ann. Cas. 1912A, 850, 33 L. R. A. (N. S.) 632.

§ 229. **Exemptions — Relationship of Parties:** See Remington's Digest, Tax., § 229; State v. Clark, 30 Wash. 439, 71 Pac. 20.

One thousand dollars is deductible as a family allowance, notwithstanding a non-intervention will: Ferrel's Estate, In re, 112 Wash. 231, 192 Pac. 10.

The tax is to be based upon the ap-

praised value of real estate not disposed of, and upon the prices received for lands sold to pay debts at less than appraisement: Ferguson's Estate, In re, 113 Wash. 598, 194 Pac. 771.

Bequests for charitable purposes, what are: Duncan's Estate, In re, 113 Wash. 165, 193 Pac. 694.

Construction of inheritance tax law with respect to rate of taxation. Ann. Cas. 1914B, 627.

§ 11203. [9184.] **Property Outside State.**

Except as to the limitations prescribed in section 11202 from the inheritance tax and real property located outside the state passing in fee from the decedent owner, the tax imposed under section 11202, shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state. [L. '01, p. 68, § 3.]

Property Liable—Property of Nonresidents or Aliens: See Remington's Digest, Tax., § 228; Clarke's Estate, In re, 37 Wash. 671, 80 Pac. 267.

— **Deduction of debts—Construction:** Lambrecht's Estate, In re, 112 Wash. 645, 192 Pac. 1018.

Physical presence or absence of personal property, or evidence thereof, as affecting liability to tax. 46 L. R. A. (N. S.) 1167.

Succession tax on bonds of domestic corporation owned by estate of nonresident and held at his residence. 8 A. L. R. 863.

§ 11204. [9185.] **Valuation of Foreign Estate.**

In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the state board of tax commissioners duly certified statements exhibiting the true market value of the entire [e]state of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property, as the value of the property within this state bears to the value of the entire estate. [L. '01, p. 69, § 4; L. '07, p. 501, § 3.]

Section 5 of the Laws of 1901 was repealed by Laws of 1907, page 504, § 11.

**§ 11205. [9188.*] Appraisement of Life Estates and Estates for Years—
Removal of Lien of Tax.**

Whenever the estate of a deceased person shall be subject to an inheritance tax, and there shall be an annuity, life estate or an estate for a term of years given to one or more persons and the remainder to another or others, the entire estate shall be appraised as other estates are required to be appraised by the laws of this state. The value of the annuity, life or term estate shall be determined according to the rules or standards of mortality and of value commonly used in actuaries' combined experience tables on the basis of four per cent annual interest, and the value of the remainder shall be determined by deducting the amount found to be the value of the annuity, life or term estate from the whole estate. After the values shall have been determined as provided in this section, the tax shall be computed and collected in the same manner that the tax on other estates is computed and collected: Provided, however, that any person or persons owning the beneficial interest in the remainder may defer the payment of the tax thereon until they come into possession of the same by filing in the office of the county clerk within thirty days after the determination of the tax, a good and sufficient bond to the state of Washington in a sum equal to the amount of the tax, conditioned that they will pay such tax in full within sixty days after coming into possession of the estate. Said bond shall not operate to defer payment of the tax unless it be approved by the court, and if it shall appear to the judge of said court at any time that a bond previously filed and approved has become insufficient he may require a new bond to be filed. If the person or persons owning the beneficial interest in the remainder shall fail to file a bond within the time herein provided, or if they shall fail to file a new bond when directed by the court, the tax shall immediately become due and payable. The state insurance commissioner is hereby directed to obtain and publish for the use of courts and appraisers throughout the state tables showing the average expectancy of life and the values of annuities and of life and term estates. [L. '17, p. 594, § 2; L. '01, p. 70, § 8.]

§ 11206. Trust Estates—Computation of Tax—Estates in Expectancy and for Life.

When property is transferred in trust or otherwise and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, such property shall be appraised at its clear market value immediately upon the transfer or as soon thereafter as practicable and a tax shall be imposed upon such transfer at the lowest rate which on the happening of any of said contingencies or conditions would be possible under the provisions of this act and such tax so imposed shall be due and payable in the same manner as other taxes under this chapter: Provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is transferred to a person or corporation which, under the provisions of this act is required to pay a tax at a higher rate than the tax imposed then such transferee

shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Estates in expectancy which are contingent or defeasible and in which proceedings for determination of the tax have not been taken or where the taxation thereof has been held in abeyance shall be appraised at their full undiminished clear value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. [L. '17, p. 595, § 4.]

Succession tax on property appointed
by deed under power of appoint-

ment. 5 A. L. B. 183; 33 L. B. A.
(N. S.) 236; L. B. A. 1918D, 339.

§ 11207. [9189.] Devise to Executor in Lieu of Commission — Excess Liable.

Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion, or on the application of the state board of tax commissioners, shall fix such compensation. [L. '01, p. 72, § 9; L. '07, p. 502, § 5.]

§ 11208. [9100.] When Heir or Devisee shall Pay Tax on Legacy.

Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the legacies, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state board of tax commissioners, in the same manner as the payment of the legacy itself could be enforced. [L. '01, p. 72, § 10; L. '07, p. 502, § 6.]

See notes to § 11201.

Inheritance tax as payable out of estate or out of legacy or devise. 20 Ann. Cas. 1358.

§ 11209. [9191.] Executors, etc., to Collect Tax.

Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable by him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver

any specific legacy or property subject to said tax to any person until he has collected the tax thereon. [L. '01, p. 72, § 11.]

Cited in 75 Wash. 79.

Personal liability of executor or administrator for payment of in-

heritance tax. *Ann. Cas.* 1915A, 265; *L. R. A.* 1915C, 615.

§ 11210. [9192.*] Taxes Payable to State Treasurer—Interest.

All taxes imposed by this act shall take effect and accrue upon the death of the decedent or donor. If such tax is not paid within fifteen months from the accruing thereof, interest shall be charged and collected at the rate of eight per centum per annum unless by reason of necessary litigation such tax cannot be determined and paid as herein provided, in which case interest at the rate of eight per centum per annum shall be charged upon such tax from and after the time the cause of such delay is removed. In all cases where a bond shall be given under the provisions of section 11217 [11205] interest shall be charged at the rate of eight per centum per annum from and after a period of sixty days from the time that the person or persons owning the beneficial interest come into the possession of same until the payment thereof. [L. '17, p. 595, § 3; L. '01, p. 72, § 12; L. '07, p. 502, § 7.]

Cited in 112 Wash. 650.

Under this section, and § 11201, supra, the tax draws interest from the date of the death of deceased, unless paid within

fifteen months thereafter: *Lambrecht's Estate, In re*, 112 Wash. 645, 192 Pac. 1018.

§ 11211. [9193.*] Appraisers—Appointment, Duty, etc., of—Objections to Appraisement.

The superior court, having jurisdiction, shall appoint three suitable, disinterested persons to appraise the estate and effects of deceased persons for inheritance tax purposes, and unless otherwise provided by order of the court, the appraisers appointed under the probate law to appraise the estate and effects of deceased persons, shall be and constitute the appraisers under the provisions of this act. The state tax commissioner or any person interested in the estate appraised, may file exceptions to the appraisement, which shall be heard and determined by the court having jurisdiction in probate of the estate involved. If, upon the hearing, the court finds the amount at which the property is appraised is its market value and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the market value of the property, or that the same was not fairly or in good faith made, it shall set aside the appraisement and determine such value. The state tax commissioner, or anyone interested in the property appraised, may appeal to the supreme court from the order of the superior court in the premises. [L. '19, p. 52, § 1; L. '01, p. 73, § 13; L. '05, p. 222, § 1; L. '07, p. 504, § 12.]

See notes to § 11201.

§ 11212. [9194.] Corporate Stock, Payment of Tax on.

If a foreign executor, administrator or trustee shall assign any corporate stock, or obligations in this state standing in the name of a de-

cedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, otherwise, the corporation permitting its stock to be so transferred on its books shall be liable to pay such tax. No safe deposit company, bank or other institution, person or persons, holding any securities, property or assets of any nonresident decedent, shall deliver or transfer the same to any nonresident executor, administrator or representative of such decedent, until after a notice in writing of the time and place of such transfer shall have been duly given the state board of tax commissioners at least ten (10) days prior thereto, and the tax imposed by this chapter paid thereon, and every such safe deposit company, bank or other institution, person or persons, shall be liable for the payment of such tax. [L. '01, p. 73, § 14; L. '07, p. 503, § 8.]

See notes to § 11201.

Situs of corporate stock for purposes
of succession tax. 13 Ann. Cas. 741;
Ann. Cas. 1918A, 555; 19 L. B. A.

(N. S.) 887; 25 L. B. A. (N. S.)
384; L. B. A. 1917F, 270.

§ 11213. [9195.*] List of Heirs.

Upon the filing of any petition for letters of administration or for the probate of any will, the petitioner shall file with the clerk of the court a statement in such form as the state tax commissioner may prescribe, which statement shall contain a list of heirs, legatees or devisees of said estate, if known, and the relationship which each bears to the decedent, together with a statement of the location, nature and probable value of the entire estate, and an estimate of the amount or value of each distributive share, the residence and date of death of decedent, and shall state whether such deceased died testate or intestate, and the clerk of the court shall not accept such petition for filing unless the same is accompanied by such statement. The clerk of the court shall immediately forward such statement to the state tax commissioner. [L. '19, p. 56, § 1; L. '01, p. 73, § 15; L. '05, p. 223, § 2; L. '07, p. 505, § 13.]

See notes to § 11201.

§ 11214. [9196.] Extension of Time When Estate Complicated.

Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is [impracticable] for the executor, administrator, trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for the filing of the appraisement for a period not to exceed three months beyond the time fixed by law. [L. '01, p. 74, § 16.]

§ 11215. [9197.] Compromise, When Value of Estate Doubtful.

Whenever an estate charged, or sought to be charged with the inheritance tax, is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot, with reasonable cer-

tainty, be ascertained under the provisions of law, the state board of tax commissioners may compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the superior court having jurisdiction of the estate, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. [L. '01, p. 74, § 17; L. '07, p. 503, § 9.]

§ 11216. Determination of Tax Without Administration.

When any person dies leaving property within the jurisdiction of the state of Washington, which shall pass by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, and there has been no application for letters of administration of the estate of such deceased person, or when administration of any estate has been completed without an adjudication of the inheritance tax, the liability of such property for the payment of an inheritance tax may be determined without administration in the manner hereinafter provided.

When any person interested in such property shall deem the same not subject to an inheritance tax, or when he admits the liability for such tax but desires to adjust the same, he may file a petition in the superior court of the proper county to determine the questions arising under the inheritance tax statutes. Such petition shall contain the name and date of death of decedent, the description and estimated value of all property involved, the names and places of residence of all persons interested in the same, and such other facts as are necessary to give the court jurisdiction. The court shall thereupon set a day for hearing said petition and a copy thereof, together with a notice of the time and place of such hearing, shall be served by the petitioner or his attorney upon the state board of tax commissioners and on each person interested in said property, at least twenty days before the date of hearing, if served personally, and if served by publication the service shall be the same as the service of summons by publication in civil actions.

The court shall hear said matter upon the relation of the parties, the testimony of witnesses and evidence produced in open court, and, if it shall be found that the property is not subject to any tax, the court shall make and enter an order determining that fact; but, if it shall appear that the whole or any part of said property is subject to a tax, the same shall be appraised and the tax levied and collected as in other cases. An adjudication by the superior court, as herein provided, shall be conclusive as to the lien of said tax, subject to the right of appeal to the supreme court allowed by the laws of the state. [L. '17, p. 596, § 5.]

Cited in 112 Wash. 646, 649.

§ 11217. [9198.] Tax Commissioners to Supervise Collection of Tax—Records.

Administrators, executors and trustees of the estates subject to the inheritance tax shall, when demanded by the state board of tax commis-

sioners, send such board certified copies of such parts of their reports as may be demanded by it or any member thereof, and upon refusal of said parties to comply with such demand, it is the duty of the clerk of the court to furnish such copies, and the expense of making the same shall be charged against the estate as are other costs in probate. And it shall be the duty of the state board of tax commissioners to exercise general supervision of the collection of the inheritance taxes provided in this chapter, and in the discharge of such duty the state board of tax commissioners, or any member thereof, may institute and prosecute such suits or proceedings in the courts of the state as may be necessary and proper, appearing therein for such purpose; and it shall be the duty of the several county attorneys to render assistance therein when called upon by such board so to do. The said board shall keep a record in which shall be entered a memoranda of all the proceedings had in each case, and shall also keep an itemized account showing the amount of such taxes collected, in detail, charging the state treasurer therewith. [L. '01, p. 74, § 18; L. '07, p. 503, § 10.]

§ 11218. [9199.*] Certain Charitable Bequests Exempted.

All bequests and devises of property within this state when the same are for one of the following charitable purposes, namely, the relief of the aged, indigent and poor people, maintenance of sick or maimed, the support or education of orphans or indigent children, and all bequests and devises heretofore made to the state of Washington or to any county, city, school district or other municipal corporation therein for eleemosynary, charitable, educational or philanthropic purposes, and all bequests and devises made to schools and colleges in the state supported in whole or in part by gifts, endowments or charity, the entire income of which said school or college, after paying the expenses thereof, is devoted to the purposes of such institution and which is open to all persons upon equal terms, shall be exempt from the payment of any inheritance tax and any property in this state which has been devised or bequeathed for such purposes and upon which a state inheritance tax is claimed or is owing is hereby declared to be exempt from the payment of such tax. [L. '21, p. 160, § 1; L. '05, p. 199, § 1; L. '17, p. 597, § 6.]

Cited in 113 Wash. 172.

A bequest by a missionary for the purpose of uplifting a tribe of natives from a state of heathenism to the light of Christianity, is not exempt, under this section: *Duncan's Estate*, In re, 113 Wash. 165, 193 Pac. 694.

A bequest is not exempt where trus-

tees are given a discretionary power to merge the fund with other funds to be used for other purposes: *Id.*

Effect of exemption of religious body or society from general taxation to exempt it from succession tax. 17 A. L. R. 1050; 23 L. R. A. (N. S.) 1208; 48 L. R. A. (N. S.) 373.

CHAPTER IX.

EQUALIZATION OF ASSESSMENTS.

§ 11219. [9200.] County Board of Equalization—Duties—Auditor as Clerk.

The county commissioners, the county assessor and the county treasurer or a majority of them, shall form a board for the equalization of the assessment of the property of the county. They shall meet in open session for this purpose annually on the first Monday in August at the office of the county assessor, who shall act as clerk of said board, and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, and subject to the following rules:

First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual whenever they believe that such aggregate value is less than the true valuation of the taxable personal property possessed by such individual to such sum or amount as they believe to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall, upon complaint in writing of any party aggrieved, being a nonresident of the county in which his property is assessed, reduce the valuation of each class of personal property enumerated in section 11137 aforesaid, which in their opinion is returned above its true and fair value, to such price or sum as they believe to be the true and fair value thereof; and, upon like complaint, they shall reduce the aggregate valuation of the personal property of such individuals who, in their opinion, have been assessed at too large a sum, to such sum or amount as they believe was the true and fair value of his personal property.

The county assessor shall keep an accurate journal or record of the proceedings and orders of said board in a book kept for that purpose, showing the facts and evidence upon which their action is based, and the said record shall be published the same as other proceedings of

county commissioners, and shall make a true record of the changes of the descriptions and assessed values ordered by the county board of equalization. Having corrected the real and personal assessment-rolls in accordance with the changes made by the said county board of equalization, he shall make duplicate abstracts of such corrected values, one copy of which shall be retained in his office, and one copy forwarded to the state auditor on or before the first Monday in September next following the meeting of the county board of equalization.

The county board of equalization may continue in session and adjourn from time to time during three weeks, and shall remain in session not less than three days, commencing on the first Monday in August: Provided, that no taxes, except special taxes, shall be extended upon the tax-rolls until the property valuations are equalized by the state board of equalization for the purpose of raising the state revenue.

The county assessor shall make a record of all errors in descriptions, double assessments, or manifest errors in assessment appearing on the assessment-list at the time of the extension of the rolls, and after duly verifying the same, file said record with the county board of equalization on the third Monday in November next succeeding the annual meeting of the county board of equalization. The county board of equalization shall reconvene on such day for the sole purpose of considering such errors in description, double assessments, or manifest errors appearing on the assessment-list at the time of the extension of the rolls, and shall proceed to correct the same, but said board shall have no authority to change the assessed valuation of the property of any person, or to reduce the aggregate amount of the assessed valuation of the taxable property of the county, except only in so far as the same may be affected by the corrections ordered based on the record submitted by the county assessor. [L. '15, p. 343, § 1. Cf. L. '07, p. 239, § 1; L. '93, p. 347, § 59; L. '97, p. 162, § 58.]

See *supra*, § 11121, assessments at true value.

Cited in 60 Wash. 431; 100 Wash. 26; 112 Wash. 607, 608.

Equalization Among Taxing or Assessment Districts by County or Other Local Board or Officer: See Remington's Digest, Tax., § 82; Pierce County *ex rel.* Maloney *v.* Spike, 19 Wash. 652, 54 Pac. 41.

Nature and Scope of Remedies in General: See Remington's Digest, Tax., § 84; Spokane Falls *v.* Browne, 3 Wash. 84, 27 Pac. 1077; Olympia Water Works *v.* Thurston County, 14 Wash. 268, 44 Pac. 267.

Grounds of Review—In General: See Remington's Digest, Tax., § 85; Metropolitan Bldg. Co. *v.* King County, 62 Wash. 409, 113 Pac. 1114, Ann. Cas. 1912C, 943; State *ex rel.* Oregon R. & Nav. Co. *v.* Clausen, 63 Wash. 535, 116 Pac. 7.

Right of Review: See Remington's Digest, Tax., §§ 86, 87; Commercial Electric L. & P. Co. *v.* Judson, 21 Wash. 49, 56 Pac. 829, 57 L. R. A. 78; Citizens' Nat.

Bank v. Columbia County, 23 Wash. 441, 63 Pac. 209; Chehalis Boom Co. *v.* Chehalis County, 24 Wash. 135, 63 Pac. 1123; Eureka District Gold Mining Co. *v.* Ferry County, 28 Wash. 250, 68 Pac. 727; Kahn *v.* Thorpe, 43 Wash. 463, 86 Pac. 855; Smith *v.* Newell, 32 Wash. 369, 73 Pac. 369.

Authority and Powers of Board or Officer—In General: See Remington's Digest, Tax., §§ 88—91; Heilig *v.* City Council of Puyallup, 7 Wash. 29, 34 Pac. 164.

§ 89. — **Change of Valuation or Amount of Tax in General:** State *ex rel.* Thompson *v.* Nichols, 29 Wash. 159, 69 Pac. 771.

An overvaluation of standing timber by the county assessor may be reduced by the board of equalization: Stimson Timber Co. *v.* Mason County, 112 Wash. 603, 192 Pac. 994.

§ 90. **Increase:** Lewis *v.* Bishop, 19 Wash. 312, 53 Pac. 165.

§ 91. Reduction: State ex rel. Ross v. Headlee, 22 Wash. 126, 66 Pac. 126.

A lump sum reduction of the total tax levied for county roads is equivalent to a reduction pro tanto on each individual item in the budget and does not avoid the tax: Spokane, Portland & Seattle R. Co. v. Franklin County, 106 Wash. 21, 179 Pac. 113.

Proceedings by and Before Board or Officer: See Remington's Digest, Tax., §§ 93—97.

Notice to Persons Interested: Lewis v. Bishop, 19 Wash. 312, 53 Pac. 165; Ladd v. Gilson, 26 Wash. 79, 66 Pac. 126; Everett Water Co. v. Fleming, 26 Wash. 364, 67 Pac. 82; Doty Lumber & Shingle Co. v. Lewis County, 60 Wash. 428, 111 Pac. 562, Ann. Cas. 1912B, 870; Blumauer v. Mann, 72 Wash. 429, 130 Pac. 491.

§ 94. — Evidence and Hearing: Edison Elec. Illuminating Co. v. Spokane County, 22 Wash. 168, 60 Pac. 132; Templeton v. Pierce County, 25 Wash. 377, 65 Pac. 553; Simpson Logging Co. v. Chehalis County, 80 Wash. 245, 141 Pac. 344.

§ 95. — Conclusiveness of Decision and Right of Review by Appeal: Olympia Waterworks v. Thurston County, 14 Wash. 268, 44 Pac. 267; Knapp v. King County, 15 Wash. 541, 46 Pac. 1047; Olympia Waterworks v. Gelbach, 16 Wash. 482, 48 Pac. 251; Buchanan v. Adams County, 15 Wash. 699, 46 Pac. 643; Baker v. King County, 17 Wash. 622, 50 Pac. 481; Noyes v. King County, 18 Wash. 417, 51 Pac. 1052; Lewis v. Bishop, 19 Wash. 312, 53 Pac. 165; Great Northern R. Co. v. Snohomish County, 54 Wash. 23, 102 Pac. 881; Spokane & Inland Empire R. Co. v. Spokane County, 75 Wash. 72, 134 Pac. 688; Simpson Logging Co. v. Chehalis County, 80 Wash. 245, 141 Pac. 344.

§ 96. — Presumptions as to Validity: Stull v. De Mattos, 23 Wash. 71, 62 Pac. 451, 51 L. R. A. 892; Vancouver

Water Works Co. v. Clarke County, 55 Wash. 112, 104 Pac. 180.

The presumption in favor of the reasonableness of the assessed valuation of coal mining property must be overcome by clear and satisfactory evidence, and this is not done where it appears that further prospecting work and investigation was necessary before the company's engineer could give his opinion as to whether it contained coal that could be mined at a profit: Washington Union Coal Co. v. Thurston County, 105 Wash. 208, 177 Pac. 744, 2 A. L. R. 1546.

§ 97. — Review by Courts: State ex rel. Oregon R. & Nav. Co. v. Clausen, 63 Wash. 535, 116 Pac. 7; Spokane & Inland Empire R. Co. v. Spokane County, 75 Wash. 72, 134 Pac. 688; Simpson Logging Co. v. Chehalis County, 80 Wash. 245, 141 Pac. 344; Oregon-Washington R. & Nav. Co. v. Thurston County, 98 Wash. 218, 167 Pac. 930.

Jurisdiction and Powers of Courts in General: See Remington's Digest, Tax., § 98; Baker v. King County, 17 Wash. 622, 50 Pac. 481; Knapp v. King County, 17 Wash. 567, 50 Pac. 480; Edison Elec. Illuminating Co. v. Spokane County, 22 Wash. 168, 60 Pac. 132; Phillips v. Thurston County, 35 Wash. 187, 76 Pac. 993; Sound Inv. Co. v. Bellingham Bay Land Co., 45 Wash. 636, 88 Pac. 1117; Great Northern R. Co. v. Snohomish County, 54 Wash. 23, 102 Pac. 881; Doty Lumber & Shingle Co. v. Lewis County, 60 Wash. 428, 111 Pac. 562, Ann. Cas. 1912B, 870.

Appeal from Assessment: See Remington's Digest, Tax., § 99; Union Wharf Co. v. Katz, 11 Wash. 407, 39 Pac. 647.

Mandamus to Correct Assessment: See Remington's Digest, Tax., § 101; Puget Sound Agr. Co. v. Pierce County, 1 W. T. 159.

Injunction to Restrain Assessment: See Remington's Digest, Tax., § 102; Andrews v. King County, 1 Wash. 46, 23 Pac. 409, 22 Am. St. Rep. 136.

§ 11220. [9202.] Time of Change.

This act shall take effect on the second Monday in January, 1911.
[L. '09, p. 820, § 6.]

"Act" applies to §§ 11224, 11225, 11237, 11241, *infra*.

§ 11221. [9203.] Record of Changes and Abstract of Tax-roll.

The county auditor shall make due record of the changes of the descriptions and assessed values determined by the county board of equalization, and make corrections accordingly. Having made such corrections of the real and personal lists, or both, as the case may be, he shall make duplicate abstracts of such corrected values, one copy of which he shall file in his office, and one copy he shall forward to the auditor of state on or before the first Monday of September following each county equali-

zation. The county auditor shall, also, on or before the fifteenth day of January in each year, make out and transmit to the auditor of state, in such form as may be prescribed, a complete abstract of the tax-rolls of the county, showing the number of acres of land assessed, the value of such land, including the structures thereon; the value of town and city lots, including structures; the total value of all taxable personal property in the county; the aggregate amount of all taxable property in the county; the total amount as equalized, and the total amount of taxes levied in the county for state, county, town and all other purposes, for that year. Should the auditor of any county fail to transmit to the state auditor the first abstract provided for in this section by the time the state board of equalization convenes, and if, by reason of such failure to transmit such abstract, any county shall fail to collect and pay to the state its due proportion of the state tax for any year, the state board of equalization shall, at its next annual session, ascertain what amount of state tax said county has failed to collect, and the state auditor shall charge the amount to the proper county and notify the auditor of said county of the amount of said charge; said sum shall be due and payable immediately by warrant in favor of the state on the general county fund of said county. [L. '93, p. 348, § 60; L. '97, p. 163, § 59.]

§ 11222. [9204.*] Duties of State Board of Equalization.

The state auditor, the commissioner of public lands and the state tax commissioner shall constitute the state board of equalization. The state auditor shall be president of the board, and the state tax commissioner shall be secretary thereof. The board shall remain in session not to exceed twenty (20) days; may adjourn from day to day, and employ such clerical assistance as may be deemed necessary to facilitate its labors: Provided, that the expense of such board shall not exceed the sum of seven hundred fifty dollars (\$750) in any one year. The said board shall meet annually, on the first Tuesday in September, at the office of the state tax commissioner, and shall examine and compare the returns of the assessment of the property in the several counties of the state, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state.

First. They shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal and uniform, so far as possible, in every part of the state, for the purpose of ascertaining the just amount of tax due from each county for state purposes.

Second. The secretary shall keep a full record of the proceedings of the board, and the same shall be published annually by said state tax commissioner.

Third. They shall have authority to adopt the rules and regulations for the government of the board, and to enforce obedience to its orders

in all matters in relation to the returns of county assessments, and the equalization of values by said board.

The said board of equalization shall apportion the amount of tax for state purposes as required by law to be raised in the state among the several counties therein, in proportion to the valuation of the taxable property therein for the year as equalized by the board, and shall also ascertain the gross amounts justly due from each county for military, state bond interest, and state bond sinking fund taxes, at rates and limitations fixed by law. It shall be the duty of the county assessor in each county when he shall have received the report of the state auditor, as provided in section 11224, to determine the rates per cent necessary to raise the taxes required for state purposes as determined by the state board of equalization, and place the same on the tax rolls of the county as provided by law. [L. '17, p. 211, § 1; L. '15, p. 20, § 1. Cf. L. '07, p. 496, § 1; L. '93, p. 349, § 61; L. '97, p. 164, § 60; L. '99, p. 288, § 4.]

See supra, § 4934, to levy state school tax.

See supra, § 10763, duties devolve upon state equalization committee.

See supra, § 10893, state board of equalization abolished.

Cited in 42 Wash. 301; 75 Wash. 80, 100.

State ex rel. Board of Tax Commrs. v. Cameron, 90 Wash. 407, 156 Pac. 537.

Equalization Among Counties or Other Municipalities by State Board or Officer: See Remington's Digest, Tax., § 83; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; State ex rel. Thompson v. Nichols, 29 Wash. 159, 69 Pac. 771; Great Northern R. Co. v. Snohomish County, 54 Wash. 23, 102 Pac. 881; Canadian Pac. R. Co. v. King County, 90 Wash. 38, 155 Pac. 416;

Certiorari to Review Assessment: See Remington's Digest, Tax., § 100; Lewis v. Bishop, 19 Wash. 312, 53 Pac. 165; State ex rel. Spokane & Inland Empire R. Co. v. State Board of Equalization, 75 Wash. 90, 134 Pac. 695; State ex rel. Oregon-Washington R. & Nav. Co. v. Clausen, 82 Wash. 1, 143 Pac. 312.

§ 11223. [9205.] Transcript of Proceedings to be Transmitted to Counties.

When the state board complete their equalization, the auditor of state shall transmit to each county auditor a transcript of the proceedings of the board, within ten days after said board adjourns, specifying the amount to be levied and collected on said assessment-books for state purposes for such year, and in addition thereto he shall certify to each county auditor the amount due to each fund and unpaid from such county for the seventh preceding year, commencing with the tax levied for the year 1892. Every succeeding year thereafter the delinquent state taxes shall be so certified to the county auditors, and this sum shall be added to the amount levied for the current year. The state auditor shall close the account of each county for the seventh preceding year and charge the amount of such delinquency to the tax levy of the current year. All taxes collected on and after the first day of July last preceding such certificate, on account of delinquent state taxes for the seventh preceding year, shall belong to the county and by the county treasurer be credited to the county current expense fund of the county in which collected. The county auditor shall compute the required per centum on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, and shall extend such taxes in the proper columns

of such books: Provided, that the rate so computed shall not be such as to raise a surplus of more than five per cent over the total amount required by the state board. [L. '93, p. 350, § 62; L. '97, p. 165, § 61; L. '99, p. 289, § 5.]

See notes to § 11222.

See supra, § 4935, certifying state school tax to county auditors.

See next section.

§ 11224. [9206.] Transmission to County Assessor After 1911.

When the state board of equalization shall have completed their equalization, the state auditor shall, within ten days after the adjournment of said board, transmit to each county assessor a transcript of the proceedings of the board, specifying the amount to be levied and collected on said assessment-books for state purposes for such year. He shall also certify to each county assessor the amounts due to each fund and unpaid from such county for the seventh preceding year, which sum shall be added to the amount levied for the current year. [L. '09, p. 818, § 2.]

See notes to § 11222.

This act does not take effect until January, 1911: See § 11220, supra.

§ 11225. [9207.] Levies Certified to Assessor After 1911.

It shall be the duty of the board of county commissioners of each county, of city and town councils, school directors, town officers, and all other officials, or boards, required by law to levy or assess taxes upon real or personal property, through their chairman and clerk, or secretary, on or before the tenth day of October in each year, to certify to the county assessor the amount of taxes levied upon the real and personal property in the county, or such city, town, school, road, or other taxing district. [L. '09, p. 819, § 3.]

This act does not take effect until January, 1911: See § 11220, supra.

CHAPTER X.

LEVY OF TAX.

§ 11226. "Taxing District," "Assessed Value," Defined.

The term "taxing district" as used in this act shall be held and construed to mean and include the state and any county, city, town, township, port district, school district, metropolitan park district, or other municipal corporation authorized or having the power to levy taxes now or hereafter existing; and the term "assessed value of property" as used in this act shall be held and construed to mean the aggregate valuation of the property subject to taxation by any taxing district as placed on the last completed and balanced tax-rolls of the county next preceding the date of any tax levy. [L. '19, p. 392, § 1.]

§ 11227. Construction of Statutory Terms.

The terms "assessed valuation of taxable property," "valuation of taxable property," "value of taxable property," "taxable value of prop-

erty," "property assessed" and "value" whenever used in any statute, law, charter or ordinance with relation to the levy of taxes in any taxing district, shall be held and construed to mean "assessed value of property" as hereinabove in section 11226 of this act defined. [L. '19, p. 392, § 2.]

§ 11228. Taxable Value for Levies.

Whenever any taxing district or the officers thereof shall, pursuant to any provision of law or of its charter or ordinances, levy any tax, the assessed value of the property of such taxing district shall be taken and considered as the taxable value upon which such levy shall be made. [L. '19, p. 392, § 3.]

§ 11229. [9208.] Itemized Statement of Proposed Expenditures and of Receipts.

It shall be the duty of county commissioners, city and town councils, and school directors of school districts lying wholly, or in part, within the limits of any incorporated city or town, on or before the first Monday in September of each year, to make estimates of the amount required to meet the public expense for the ensuing year, and to be raised by taxation in such county, city, town, road, school, or other taxing district. Such estimates shall be fully itemized, showing under separate heads the amount required for each department, public office, public official, for each public improvement, for the maintenance of each public building, structure, or institution, the salary of each public officer or employee, the maintenance of public highways, roads, streets, bridges, the construction, operation and maintenance of each public utility, and shall contain a full and complete disclosure and statement of the contemplated expenditures for the ensuing year, showing the amount proposed to be expended from each separate fund, and the total amount of public expense. Said statement shall also contain an estimate of the receipts for the ensuing year from sources other than direct taxation, and the amount, or amounts, proposed to be raised by taxation upon the real and personal property of such county, city, town, road, school, or other taxing district. [L. '09, p. 531, § 1.]

Cited in 113 Wash. 336, 337. 344.

This act is a revenue and taxation statute and has no application to the requisites and validity of a contract for

the erection of a detention home, pursuant to section 1987-13, which the county had power to make: *Hughes v. McVay*, 113 Wash. 333, 194 Pac. 565.

§ 11230. [9209.] Time of Making Levy—Notice.

The estimates required in section 11229, together with a notice that such board of county commissioners, city or town council, or board of school directors, will meet on the first Monday in October for the purpose of making tax levies, as stated in said estimates, and naming the time and place of holding such meeting, shall be published for at least two (2) consecutive weeks following the adoption of such estimates as follows: Estimates of expenditures, required to be disbursed by county commissioners, shall be published in the official newspaper of the county, if there be one; if not, then in a newspaper of general circulation in such

county. All other estimates shall be published in a newspaper of general circulation in such county, town, school or other taxing district. [L. '09, p. 531, § 2.]

See supra, § 4934, time of levying state school tax.

Cited in 113 Wash. 336, 344.

§ 11231. [9210.] Hearings—Levy of Tax.

It shall be the duty of county commissioners, city and town councils, and of school directors of school districts, lying wholly, or in part, within the limits of any incorporated city or town, to meet on the first Monday in October, and at the time and place designated in said notice, when and where any taxpayer who may appear shall be heard in favor or against any proposed tax levies. When such hearings shall have been concluded, such county commissioners, city or town councils, and school directors, shall proceed to make, determine, and decide the amount of taxes to be levied upon the current assessment-rolls. All taxes shall be levied or voted in specific sums, and shall not exceed the amount specified in such published estimates. [L. '09, p. 532, § 3.]

Cited in 113 Wash. 336, 337, 344, 345.

§ 11232. [9211.*] Limitation on Incurrence of County and City Indebtedness.

It shall be unlawful for the county commissioners, or any city council or city commission, or any public officer or employee of a county or city, to contract indebtedness or incur any liability in behalf of his or their county or city during any current fiscal year more than two per centum in excess of the revenues provided for such year at the public hearing held as required by section 11231 unless authorized by a majority vote of the electors of the city or county at a general or special election, and any indebtedness contracted or liability incurred in violation hereof shall be void: Provided, that nothing herein contained shall be held to modify or change the limitations prescribed by section 6417, or by any law limiting the debts of any taxing district to an amount based on a percentage of the assessed valuation thereof. [L. '17, p. 581, § 1; L. '09, p. 532, § 4.]

§ 11233. Applicability of Act.

None of the requirements of section 11232 shall apply to any city having a population of over one hundred and four thousand, according to the federal census, or to a city having similar current revenue charter provisions. [L. '17, p. 582, § 2.]

§ 11234. [9212.*] Taxes, How Levied—Delinquencies, How Applied.

All county taxes shall be levied or voted in specific amounts, and the rates per centum shall be determined from the amount of property as equalized by the county board of equalization each year, except such general taxes as may be definitely fixed by law. The amount of state tax shall be levied by the state board of equalization and the rate be

ascertained by the several county auditors on the valuation in their respective counties: Provided, that the amount levied in any one year shall not, for general state purposes, exceed five mills on a dollar, property valuation of the entire state. The amount of levy, as determined annually by the state board, shall be certified by the auditor of state to each county auditor on or before the last Monday of September of each year. The county taxes shall be levied by the county commissioners between the first and second Mondays of October of each year. The tax for payment of county current expenses shall be based upon an itemized statement of the estimated county expenses for the ensuing fiscal year, which statement shall be included in the published proceedings of the said board, and no greater levy of county tax shall be made upon the taxable property of any county than will be equal to the amount of such estimated expenses, with an excess of fifteen per cent of the same. The tax for the payment of county indebtedness shall be based upon the indebtedness of the county, taking into consideration the amount of unpaid taxes, interest and penalty thereon, and all other assets applicable to the payment of such indebtedness: Provided, that this shall not be construed to affect any existing provisions of law relating to the levy of taxes for payment of any funded or bonded indebtedness or the interest thereon. The rate per centum of all taxes, except the state tax and such other taxes, the rates of which may be fixed by law or the county commissioners, shall be calculated and fixed by the county auditor according to the limitations hereinafter prescribed: Provided, that all collections made on and after the first day of February, 1898, for delinquent county taxes for the year 1896 and prior years, be credited to the county indebtedness fund, and with the taxes collected from the levy for payment of county indebtedness shall be paid and applied upon the county indebtedness outstanding on said first day of February, 1898, the payment of which is not otherwise provided for by law, and on and after said first day of February, 1898, all salaries, court expenses, and all other current expenses of the county shall be paid out of money collected from the levy of taxes for payment of county current expenses: And provided further, that all revenues other than taxes accruing to the county after the first day of February, 1898, and payable under laws enacted heretofore into the "general" or "county fund" or "salary fund," shall be paid into said county current expense fund. [L. '20, p. 16, § 1. Cf. L. '93, p. 351, § 63; L. '97, p. 166, § 62.]

See Const., Art. VII, § 1, rule of taxation.

See supra, § 2735, for farm development.

See supra, §§ 2766, 2769, expense of removing noxious weeds.

See supra, §§ 2851, 2852, horticultural levy.

See supra, § 3040, annual tax levy for regulation of livestock industry.

See supra, § 4219, salary fund.

See supra, §§ 4281—4284, levy to pay dike district bonds.

See supra, § 4391, annual levy for dike maintenance.

See supra, §§ 4329—4331, levy to pay drainage district bonds.

See supra, § 4497, to liquidate claims against drainage district.

See supra, §§ 4729, 4733, 4939, 4947, levy for school district bonds.

See supra, § 4497, levy for county circulating library.

See supra, §§ 5580, 5588, 5601, 5621, levy for redemption of county bonds.

See supra, §§ 5601, 5621, levy for city and county funding bonds.

See supra, § 5637, city levy for current expenses.

See supra, § 5639, levy for city indebtedness.

See supra, §§ 6413, 6420, levy for roads and bridges.

See supra, §§ 6563—6565, maintenance of turnpikes.

See supra, § 6625, levy for improved roads.

See supra, §§ 6724, 6729, metropolitan park district levy.

See supra, § 6818, levy for public highway fund.

See supra, §§ 8226—8228, levy for public libraries.

See supra, §§ 8602, 8603, levy to support militia.

See supra, §§ 9625, 9646, river improvements.

See supra, § 9692, post district levy.

See supra, §§ 9754, 9755, 9759, 9764, levy for commercial waterways.

See supra, § 10742, levy to support indigent veterans.

See infra, §§ 11445—11448, township levy.

Cited in 11 Wash. 592; 14 Wash. 380; 25 Wash. 646; 29 Wash. 169; 78 Wash. 194; 106 Wash. 22, 28, 29; 108 Wash. 240.

§ 11235. [9213.] Time and Rate of Levy.

For the purpose of raising a revenue for the state, county indebtedness, county current expense, school, road and other purposes, the board shall, at said October session, levy a tax on all taxable property in the county, as shown by the assessment-roll, sufficient for such purposes: Provided, that state tax shall not exceed the amount levied by the state board of equalization; the tax for payment of county indebtedness shall not exceed five mills; the tax for payment of county current expense shall not exceed eight mills; the school tax shall not exceed eight mills, except for districts in cities of ten thousand or more inhabitants, where it shall not exceed ten mills, unless the board of directors thereof shall by unanimous consent of all its members determine upon a greater levy, not exceeding two per cent; the road tax shall not exceed five mills; the bridge tax shall not exceed three mills, and all other taxes shall be in accordance with the laws of the state. [L. '03, p. 339, § 1. Cf. L. '93, p. 361, § 64; L. '97, p. 167, § 63.]

State school tax not to exceed five mills: See supra, § 4934.

County school tax, limit and levy: See supra, § 4936.

District school tax levy: See supra, § 4939.

Cited in 3 Wash. 756; 20 Wash. 160; 25 Wash. 646; 108 Wash. 239, 243.

Under this section, expressly limiting the levy for county current expenses to eight mills, which is the only authority for the levy of such a tax, a tax in ex-

cess of eight mills is invalid, and cannot be sustained upon the theory that the same was required to meet necessary governmental expenses: Great Northern Ry. Co. v. Stevens County, 108 Wash. 238, 183 Pac. 65.

§ 11236. [9214.] Auditor to Extend Tax-rolls.

The county auditor shall extend the taxes upon the assessment-books in the form herein prescribed. The rate per cent necessary to raise the required amount of the total tax for state, county indebtedness, county current expense, road, bridge, school, special school and incorporated cities, and all other county, school, municipal and state purposes, shall be computed on the assessed valuation as equalized by the county board of equalization as a whole, under the head of consolidated tax. The rate

per cent necessary to raise the required amount of any special district tax shall be computed as to the attested valuation of property within such district, as equalized by the county board of equalization; all taxes assessed against any property shall be added together and carried to the total column. In extending any tax, whenever it amounts to a fractional part of a cent greater than five mills, it shall be made one cent, and whenever it amounts to five mills or less than five mills, it shall be dropped. The amount of all taxes shall be entered in the proper columns, as shown by entering the rate per cent of consolidated tax and of such special tax at the head of the proper columns; on the first day of each month the county treasurer shall distribute pro rata, according to the rate of levy for each fund, the amount collected as consolidated tax during the preceding month, and shall certify the same to the county auditor. [L. '05, p. 243, § 1. Cf. L. '93, p. 352, § 65; L. '97, p. 167, § 64.]

Superseded by the next section after 1911.

See supra, § 4498, extension of drainage tax on rolls.

See supra, §§ 4265, 4276, 4510, extension of dike tax on rolls.

See supra, § 9754, extension of tax for commercial waterways.

See infra, § 11454, extension of township tax.

§ 11237. [9214½.] Assessor to Extend Rolls After 1911—Delivery to Auditor.

The county assessor shall extend the tax-rolls of his county in the manner required by law, and upon the completion of such tax extension, it shall be his duty to make in each assessment-book, tax-roll, or list, a certificate in the following form:

I, —, assessor of — county, state of Washington, do hereby certify that the foregoing is a correct list of taxes levied on the real and personal property in the county of —, for the year one thousand nine hundred and —

Witness my hand this — day of —, 190—.

— —,
County Assessor.

Delivering said tax-rolls to the county auditor on or before the fifteenth day of December, taking his receipt therefor. [L. '09, p. 819, § 4.]

§ 11238. [9215.] Auditor's Certificate.

It shall be the duty of the county auditor to make in each assessment-book or list a certificate in the following form, viz.:

I, A B, auditor of — county, state of Washington, do hereby certify that the foregoing is a correct list of taxes levied on the real and personal property in the county of — for the year one thousand eight hundred and —.

Witness my hand and seal this — day of —.

— —,
County Auditor.

[L. '93, p. 352, § 66; L. '97, p. 168, § 65.]

§ 11239. [9216.] Fiscal Year.

The assessment year contemplated in this chapter shall commence on the first day of March and end on the last day of February in each year, and the fiscal year contemplated in this chapter shall commence on January 1st and end on December 31st of each year. [Cf. L. '93, p. 352, § 67; L. '97, p. 168, § 66.]

"This chapter": See note to § 11099.

§ 11240. [9217.] Rolls Delivered to Treasurer, When.

On the first Monday of December next succeeding the date of levy of taxes the county auditor shall deliver to the county treasurer the assessment-books of his county for such assessment year, with his warrant thereto attached, authorizing the collection of said taxes, taking his receipt therefor, and said books shall be preserved as a public record in the office of the county treasurer. The amount of said taxes due upon said books shall be charged to the treasurer in an account to be designated as treasurer's "Tax-roll account" for —, and said books with the warrants for collection shall be full and sufficient authority for the county treasurer to receive and collect all taxes therein levied: Provided, that the county treasurer shall in no case collect such taxes or issue receipts for the same or enter payment or satisfaction of such taxes upon said assessment-rolls before the first Monday of said February following. [Cf. L. '93, p. 353, § 68; L. '97, p. 168, § 67.]

Superseded in part after 1911 by the next section.

Cited in 34 Wash. 575; 96 Wash. 331.

§ 11241. [9218.] Time for Delivery of Rolls After 1911.

On the first Monday of January next succeeding the date of the levying of taxes, the county auditor shall deliver to the county treasurer the tax-rolls of his county, with his warrant thereto attached, and taking his receipt therefor, and charging the county treasurer therewith, and keeping an account thereof in the manner required by law. [L. '09, p. 819, § 5.]

This section does not take effect until January, 1911: See § 11220.

CHAPTER XI.**POLL TAX.****§ 11242. Persons Liable for.**

All persons of this state, over twenty-one (21) years of age and under fifty (50) years of age, except idiots, insane persons, and persons supported at public expense, shall annually pay a poll tax of five dollars (\$5), which shall be due and payable in money without any exemptions whatsoever, on or before the first day of May of each year, to the county treasurer of the county in which such person resides, who shall issue to such person a receipt therefor. [L. '21, p. 674, § 1.]

Constitutionality of poll taxes. 12

Ann. Cas. 317; Ann. Cas. 1917E, 1208; 13 L. R. A. (N. S.) 901.

Classification for poll tax as affected

by constitutional requirement of uniformity. 1 Ann. Cas. 639.

Construction of poll tax statutes. 29 L. R. A. 404.

§ 11243. Listing of Inhabitants and Employers.

It shall be the duty of the county assessor of each county of the state to annually, at the time of the assessment and listing of personal property for the purpose of taxation, as provided for by law, to list all inhabitants of the county liable to pay a poll tax and to compile and furnish to the county treasurer on or before the thirtieth day of April in each year, a list of all persons liable for the payment of the poll tax as herein provided, together with the addresses of such persons. It shall be the duty of the industrial insurance department to furnish to the county treasurer of each county, on or before the thirtieth day of April of each year, a list of all employers within such county whose names appear upon the records of the industrial insurance department as contributors to the accident or other funds of said department. [L. '21, p. 674, § 2.]

§ 11244. Employer to Require Proof of Payment.

Any person, firm, corporation or company, or agent thereof, having in his or their employ persons liable to pay a poll tax as herein provided, shall, before making to any such person any payment of wages or salary after the first day of May of each year, require of such person satisfactory proof that he or she has paid the poll tax herein required, and, in the event that such proof is not furnished, such person, firm, corporation or company, or agent thereof, shall deduct from the wages or salary due and owing to each of such employees the sum of the poll tax for which such employee is then liable and to pay the same to the county treasurer, on behalf of such employee. Any person, firm, corporation or company, or agent thereof, failing to make any deductions herein provided for shall be liable for the payment of any poll tax not so deducted, together with interest and penalties; and the books, records or pay-rolls of any such employer shall always be open to inspection of any public officer, his agent or representative who is charged with any duty relating to the collection of the tax herein provided. If any employer or other person shall refuse to submit his books, records or pay-rolls for inspection by any proper officer, such officer may apply to a superior judge of the proper county for an order directing that he be allowed to make such inspection, and if any employer or other person shall refuse to obey said order he shall be in contempt of court and shall be punished as in cases of contempt. Such person shall also be guilty of a misdemeanor. [L. '21, p. 675, § 3.]

An employer cannot be rendered liable for the poll tax of his employees under the provisions of Laws of 1893, page 151, sections 6 and 7, unless it is made to appear that they reside in the road district where assessed, as the mere fact of work-

ing therein does not subject them to the tax: *Mason County v. Simpson*, 13 Wash. 250, 43 Pac. 33.

Power of legislature to compel employer to pay employee's poll tax. 9 L. R. A. (N. S.) 306.

§ 11245. Sheriff to Collect After June First.

It shall be the duty of the county treasurer of each county of the state to certify, on the first day of June of each year, to the sheriff of such county, a list of the names of all persons liable for the payment

of the poll tax as herein provided who have not made such payment, and upon receipt of such list it shall be the duty of the sheriff to collect the poll tax from such persons and from any others liable therefor. Upon the neglect or refusal of any such person or persons to pay said poll tax the sheriff shall collect the same by seizure and sale of any property owned by such person or persons, and no property shall be exempt from seizure hereunder, and any such property seized shall be sold or caused to be sold by the sheriff after ten days' notice given, the same as in notices of sale under execution, to pay the said tax and the costs of seizure and sale. [L. '21, p. 676, § 4.]

§ 11246. Collections Remitted to State Treasurer.

The various county treasurers shall on or before the first day of every month remit to the state treasurer four-fifths of all taxes collected under this act, and said taxes so remitted shall be deposited in the general fund and the county treasurers shall deposit the remaining one-fifth of said taxes collected in the current expense fund of their respective counties: Provided, that if the taxes collected under the provisions of section 10743-8 of this Code shall prove insufficient to pay the interest and principal of the bonds issued under said act, then it shall be the duty of the legislature to appropriate moneys from the general fund to cover such deficiency in an amount not in excess of the moneys transmitted to the general fund under this act. [L. '21, p. 676, § 5.]

§ 11247. Lien of Tax.

That said poll tax shall operate as a lien on all real and personal property of whatsoever kind which may be owned by or in which the said taxpayer may have an interest for the year he may owe the tax and such lien shall continue to exist thereon into whatever hands such property or interest may pass, and the county treasurer shall, on and after the first day of June of each year of which such tax shall be payable, enter such unpaid tax on the real property tax-rolls of the county in the manner provided by law for the collection of personal taxes and thereafter such tax shall be collected in the same manner and subject to the same penalties as provided for in the case of general taxes. [L. '21, p. 677, § 6.]

§ 11248. Court Clerk to Deduct Tax, When.

Before any person serving as a juror or as a witness in criminal or state cases shall receive the compensation to which he is entitled for his mileage and per diem, he shall exhibit to the clerk of the court and county auditor a receipt or other evidence of payment for the poll tax or taxes due by him, and upon failure to produce the receipt or other evidence of payment, the clerk of the court or other proper officer issuing the warrant for the mileage and per diem, shall issue a warrant for the amount due such witness less the poll tax due and shall issue a warrant for the amount so received for said poll tax to the treasurer of the county who shall collect the same; and the county treasurer shall give such person credit for the poll tax. [L. '21, p. 677, § 7.]

§ 11249. Poll Tax Receipts.

The state auditor shall prepare and have printed suitable forms of poll tax receipts with appropriate blank for name and year for which paid and date of payment, and on or before the thirtieth day of April of each year, shall furnish to the several county treasurers of the state blank receipts, countersigned with his facsimile signature, sufficient for the use of the respective counties, taking their receipt for the same. Each blank receipt for such poll tax shall be made in duplicate and numbered consecutively, the original to be delivered to the person paying said tax and the duplicate to be filed in book form in the office of the county treasurer. [L. '21, p. 677, § 8.]

§ 11250. Collection of Tax.

The county treasurer and sheriff may in the name of the county, where any poll tax is sought to be collected, invoke in the collection of such tax any process of civil procedure authorized by law. Public officers of this state shall render any service demanded by the county treasurer and county sheriff duly authorized by them, without charge or fee of any kind: Provided, that the county commissioners may allow in the case of public officers who receive their compensation by fees, such allowance chargeable as costs as provided by law. [L. '21, p. 678, § 9.]

§ 11251. Partial Invalidity.

If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. [L. '21, p. 678, § 10.]

CHAPTER XII.

COLLECTION OF TAXES.

§ 11252. [9219.*] Taxes Payable to County Treasurer—Delinquent, When—Rebate.

The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon real property made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the thirty-first day of May in each year, after which date they shall become delinquent, and interest at the rate of twelve per cent per annum shall be charged upon such unpaid taxes from the date of delinquency until paid: Provided, however, when the total amount of tax payable by one person is two dollars or more, then if one-half of such taxes be paid on or before said thirty-first day of May, then the time of payment of the remainder thereof shall be extended and said remainder shall be due and payable on or before the thirtieth day of November following but if the remaining one-half of such taxes be not paid on or before the thirtieth day of November, then such remaining one-half shall be delinquent, and interest at the rate of twelve per cent

per annum shall be charged thereon from the first day of June preceding until paid: Provided further, there shall be an allowance of three per cent rebate to all payers of taxes who shall pay the taxes on real property in one payment and in full on or before the fifteenth day of March next prior to the date of delinquency. All rebates allowed under this section shall be charged to the county current expense fund and all collections from penalties and interest on delinquent taxes shall be credited to the current expense fund. [L. '17, p. 582, § 1; L. '99, p. 290, § 6. Cf. L. '93, p. 353, § 69; L. '95, p. 513, § 14; L. '97, p. 169, § 68.]

"This act," the general revenue law and amendments embraced in this title.

See supra, §§ 3974, 3991, collection on change of county lines.

See supra, §§ 9290, 9291, payment prerequisite to record plats; or to registration of land titles, § 10681.

Cited in 17 Wash. 454; 19 Wash. 178, 186; 22 Wash. 579; 34 Wash. 575; 78 Wash. 340; 89 Wash. 361; 93 Wash. 434; 111 Wash. 636.

COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY: See Remington's Digest, Tax., §§ 123—129.

§ 123. Nature of Power to Enforce Collection: Spokane County v. Northern Pac. R. Co., 5 Wash. 89, 31 Pac. 420; Pierce County v. Merrill, 19 Wash. 175, 52 Pac. 854.

§ 124. Statutory Provisions: Spokane County v. Northern Pac. R. Co., 5 Wash. 89, 31 Pac. 420; State ex rel. Seattle v. Carson, 6 Wash. 250, 33 Pac. 428; Washington Nat. Bank v. King County, 9 Wash. 607, 38 Pac. 219; Mills v. Thurston County, 16 Wash. 378, 47 Pac. 759; State ex rel. American Sav. Union v. Whittlesey, 17 Wash. 447, 50 Pac. 119; Spokane Terminal Co. v. Stanford, 44 Wash. 45, 87 Pac. 37; Thurston County v. Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634, 12 Ann. Cas. 314, 9 L. R. A. (N. S.) 306.

§ 125. Appointment, Qualification and Tenure of Collectors: State ex rel. Seattle v. Carson, 6 Wash. 250, 33 Pac. 428; State ex rel. Olmstead v. Mudgett, 21 Wash. 99, 57 Pac. 351; Wright v. Stinson, 16 Wash. 368, 47 Pac. 761.

§ 126. Compensation of Collectors and Other Officers: Mudgett v. Liebes, 14 Wash. 482, 45 Pac. 19; State ex rel. Olmstead v. Mudgett, 21 Wash. 99, 57 Pac. 351.

§ 127. Authority to Collect Interest, Penalties and Fees: Fowler v. Fairchild,

3 Wash. 747, 29 Pac. 351; Tacoma School District v. Hedges, 13 Wash. 69, 42 Pac. 522.

§ 128. Actions Against Defaulting Officers: Dillon v. Spokane County, 3 W. T. 498, 17 Pac. 889; State ex rel. Thayer v. Mish, 13 Wash. 302, 43 Pac. 40.

§ 129. Personal Liability for Taxes Assessed on Specific Property: Clizer v. Krauss, 57 Wash. 26, 106 Pac. 145.

Actions for Unpaid Taxes: See Remington's Digest, Tax., § 132; Pierce County v. Merrill, 19 Wash. 175, 52 Pac. 854.

FORFEITURES AND PENALTIES—Statutory Provisions: See Remington's Digest, Tax., § 223; New Whatcom v. Roeder, 22 Wash. 570, 61 Pac. 767.

This section reducing the rate of interest in delinquent taxes from fifteen to twelve per cent, operates on certificates issued prior to the taking effect of this act: Security Savings Society v. Spokane County, 111 Wash. 35, 189 Pac. 260.

DISPOSITION OF TAXES COLLECTED—Interest, Penalties and Costs Collected: See Remington's Digest, Tax., § 230; School District v. Hedges, 13 Wash. 69, 42 Pac. 522; State ex rel. Thayer v. Mish, 13 Wash. 302, 43 Pac. 40; New Whatcom v. Roeder, 22 Wash. 570, 61 Pac. 767.

Misappropriation: Spokane, Portland & Seattle R. Co. v. Franklin County, 106 Wash. 21, 179 Pac. 113.

Statutory remedy for collection of taxes as exclusive of other remedies. 7 Ann. Cas. 18; 13 Ann. Cas. 729; Ann. Cas. 1915D, 741.

§ 11253. [9220.] Notice of Collection.

On receiving the tax-books from the county auditor the treasurer shall post all real property taxes from said assessment-books to the treasurer's tax-roll or ledger, and shall then give notice by publication in some newspaper having a general circulation in the county, once in each of

three consecutive weeks, that the tax-books have been turned over to him for the collection of taxes thereon, on and after the first Monday of February. He shall, when requested, notify each taxpayer in his county, at the expense of the county, having printed on said notice the name of each tax and the levy made on the same, of the amount of his real and personal property, and the total amount of tax due on the same; and from and after the taking effect of this act the county treasurer shall be the sole collector of all delinquent taxes and all other taxes due and collectible on the tax-lists of the county, and all other county officers having tax-lists in their possession are hereby directed to deliver up said lists to the treasurer of their respective counties, to the end that such treasurer shall be the sole collector of all taxes levied therein. [Cf. L. '93, p. 353, § 70; L. '97, p. 169, § 69.]

Cited in 34 Wash. 638.

What notice is necessary to due process of law in tax proceedings. **L. B. A.** 1916E, 5.

§ 11254. [9221.] Tax Receipts—Collection Register.

The county treasurer, upon receiving any tax, shall give to the person paying the same a receipt therefor, specifying therein the land, city or town lot, or other real and personal property on which the tax so paid was levied according to its description on the treasurer's tax-roll and the year for which the tax was levied. Such receipts shall be numbered consecutively for such year and such numbers and amount of taxes paid shall be immediately entered upon the treasurer's tax-roll opposite or under each and every piece of property therein for which such receipt was given; it shall contain the name of the party paying, with the amount and date of payment and the description of the property paid on. Such receipt shall be made out with a stub, which shall be a summary of the receipt. He shall post such collections into his cash or collection register, provided for that purpose, to thus keep an accurate account not only of the gross amount of collections, but also the amount collected upon the consolidated fund and upon each and every separate fund. The treasurer shall also keep a separate register for the purpose of entering therein all collections made on account of delinquent taxes. [L. '93, p. 354, § 71; L. '97, p. 170, § 70.]

Cited in 76 Wash. 94.

§ 11255. [9222.] Payment of Current Tax, When Part Delinquent.

The owner or owners of property against which there are delinquent taxes, shall have the right to pay the current tax without paying any delinquent taxes there may be against said property: Provided, however, that in issuing a receipt for such current tax the county treasurer shall indorse upon the face of such receipt a memorandum of all delinquent taxes against the property therein described, showing the year for which said tax is delinquent and the amount of delinquent tax for each and every year. [L. '05, p. 252, § 2.]

§ 11256. [9222-1.] Standing Timber—Fish-traps, Nets and Locations.

For the purposes of taxation the following described property shall be deemed personal property and shall be assessed and taxed in the county where situated, viz.:

Standing timber held or owned separately from the ownership of the land upon which it may stand.

Fish-trap, pound-net, reef-net, set-net and drag-seine fishing locations. [L. '11, p. 90, 1.]

Cited in 97 Wash. 542.

§ 11257. [9223.] Penalty, When Delinquent—Distrain for, etc.

On and after the first Monday in February succeeding the levy of taxes the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes and if such taxes are not paid within thirty days after said notice, he shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same, together with all accruing costs with interest, and shall immediately proceed to advertise the same by posting written notices thereof in three public places in the county in which such property has been levied upon, stating the time when and place where such property will be sold, and if the taxes for which such property is distrained, and the costs which accrue thereon, are not paid before the date appointed for such sale, which shall not be less than ten days after the taking of such property, such treasurer shall proceed to sell such property at public auction, or so much thereof as will be sufficient to pay such taxes with interest and costs, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall immediately pay any such overplus to the owner of the property so sold, or to his legal representatives: Provided, that if any personal property upon which the taxes have been levied but not paid, is about to be removed from the county where the same has been assessed, the county treasurer may demand such taxes without the notice provided for in this section, and if necessary may distrain and sell sufficient goods and chattels to pay the same. [L. '99, p. 291, § 7. Cf. L. '93, p. 354, § 72; L. '95, p. 514, § 15; L. '97, p. 170, § 71.]

Cited in 16 Wash. 381; 19 Wash. 178, 186; 43 Wash. 656; 76 Wash. 94; 77 Wash. 300.

Under this section and section 11272 personal property taxes are made the debt of the assessed, and distraint is not limited to the property assessed: *Porter v. County of Yakima*, 77 Wash. 299, 137 Pac. 466.

ACTIONS TO SET ASIDE TAX PROCEEDINGS: See *Remington's Digest, Tax.*, §§ 200—213, and cases cited. See, also:

§ 200. Right to Attack—State lands: *Ortman v. Kittitas County*, 105 Wash. 144, 177 Pac. 721.

§ 202. Action to Reduce Assessment—Excessive valuation—Evidence—Sufficiency: *Trimble v. Kitsap County*, 113 Wash. 527, 194 Pac. 799.

§ 206. Limitations: *Porter v. Burkley*, 112 Wash. 282, 191 Pac. 799.

§ 209. Foreclosure—Summons by publication—Evidence to set aside: *Larson v. Murphy*, 105 Wash. 36, 177 Pac. 657.

§ 210. Presumption—Reasonableness—Evidence—Sufficiency: *Washington Union Coal Co. v. Thurston County*, 105 Wash. 208, 177 Pac. 774, 2 A. L. R. 1546.

— **Valuation of property—Excessive assessment:** *Titlow v. Pierce County*, 108

Wash. 633, 185 Pac. 575; Stimson Timber Co. v. Mason County, 112 Wash. 603, 192 Pac. 994.

Vacation of Tax Judgments: See Remington's Digest, Tax., § 214—218, and cases cited.

Actions to Conform or Try Title and Remedies as to Invalid Titles: See Remington's Digest, Tax., §§ 195—199, and cases cited.

REMEDIES FOR WRONGFUL ENFORCEMENT: See Remington's Digest, Tax., §§ 219—222.

§ 219. **Injunction—In General:** Benn v. Chehalis County, 11 Wash. 134, 39 Pac. 365; Phelan v. Smith, 22 Wash. 397, 61 Pac. 31; Northwestern Lum. Co. v. Chehalis County, 24 Wash. 626, 64 Pac. 787; Ridpath v. Spokane County, 23 Wash. 436, 63 Pac. 261.

§ 220. — **Grounds of Relief:** First Nat. Bank v. Chehalis County, 6 Wash.

64, 32 Pac. 1051; Water Works v. Gelbach, 16 Wash. 482, 48 Pac. 251.

§ 221. — **Payment or Tender of Taxes not in Controversy:** Lewiston Water & P. Co. v. Asotin County, 24 Wash. 371, 64 Pac. 544.

§ 222. — **Proceedings and Relief:** Times Publishing Co. v. Everett, 9 Wash. 518, 37 Pac. 695, 43 Am. St. Rep. 865; Puget Sound Nat. Bank of Seattle v. Seattle, 9 Wash. 608, 38 Pac. 219; Lewiston Water & P. Co. v. Asotin County, 24 Wash. 371, 64 Pac. 544; North Western Lumber Co. v. Chehalis County, 25 Wash. 95, 64 Pac. 909, 87 Am. St. Rep. 747, 54 L. R. A. 212; Coolidge v. Pierce County, 28 Wash. 95, 68 Pac. 391.

Remission of Penalties: See Remington's Digest, Tax., § 224; Percival v. Thurston County, 14 Wash. 586, 45 Pac. 159; Seattle v. Whittlesey, 17 Wash. 292, 49 Pac. 489; Wyckoff v. King County, 18 Wash. 256, 51 Pac. 379.

§ 11258. [9223a.] **Penalty, When Delinquent—Distrain for, etc.**

On the first Monday in February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid on or before the fifteenth day of March of such year, he shall forthwith proceed to collect the same. In the event that he is unable to collect the same in due course, he shall prepare papers in distraint, which shall contain a description of the personal property, the amount of the tax, the amount of accrued interest at the rate of fifteen per cent per annum from March 15th, and the name of the owner or reputed owner, and shall file the same with the county sheriff, who shall immediately without demand or notice distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate of fifteen (15) per cent per annum from the fifteenth day of March of such year, together with all accruing costs, and shall immediately proceed to advertise the same by posting written notices in three public places in the county in which such property has been levied upon, one of which places shall be at the county courthouse, such notices to state the time when and the place where such property will be sold. If the taxes for which such property is distrained and the interest and cost accruing thereon are not paid before the date appointed for such sale, which shall not be less than ten (10) days after the taking of such property, such sheriff shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes with interest and costs, and shall pay to the treasurer the money so collected at such sale, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall immediately pay such overplus to the owner of the property so sold, or to his legal representative: Provided, that whenever it shall become necessary to distrain any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish-trap, pound-net, reef-net, set-net,

drag-seine fishing location, which shall be deemed to have been distrained and taken into possession when the said sheriff shall have, at least thirty (30) days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located, a notice in writing citing that he has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of tax due with interest, and the time and place of sale. A copy of said notice shall also be sent to the owner or reputed owner at his last known address by registered letter at least thirty (30) days prior to the date of sale: And provided, further, that if any personal property upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, the county treasurer may demand such taxes without the notice provided for in this section, and if necessary may distrain sufficient goods and chattels to pay the same as provided in this act. [L. '15, p. 370, § 1. Cf. L. '11, p. 90, § 2.]

Cited in 104 Wash. 391.

To distrain for personal property taxes upon a railroad some miles in length, locomotives, cars, cable and equipment at different places, the sheriff need not,

under this section, take physical possession, or do more than examine the property and give and post the legal notices: J. K. Lumber Co. v. Ash, 104 Wash. 388, 176 Pac. 550.

§ 11259. [9223-1.*] Destruction by Fire—Insurance—Lien.

In the event of the destruction of personal property by fire after the fifteenth day of March of any year, the lien of the personal property tax shall attach to and follow any insurance that may be upon said property and the insurer shall pay to the county treasurer from the said insurance money all taxes, interest and costs that may be due, against the identical property so destroyed. [L. '21, p. 377, § 1; L. '11, p. 92, § 3.]

§ 11260. [9223-2.] List Sent Treasurer.

After personal property has been assessed, it shall be unlawful for any person to remove the same from the state until taxes and interest are paid, or until notice has been given to the county treasurer describing the property to be removed and in case of public sales of personal property, a list of the property desired to be sold shall be sent to the treasurer, and no property shall be sold at such sale until the tax has been paid, the tax to be computed upon the consolidated tax levy for the previous year. Any person violating the provisions of this act shall be guilty of a misdemeanor. [L. '11, p. 92, § 4.]

§ 11261. [9224.] Lists of Noncollectible Taxes—Return to Auditor, etc.

If the county treasurer is unable, for the want of goods or chattels whereupon to levy, to collect by distress or otherwise, the taxes, or any part thereof, which may have been assessed upon the personal property of any person or corporation, or an executor or administrator, guardian, receiver, accounting officer, agent or factor, such treasurer shall file with the county auditor, on the first day of January following, a list of such taxes, with an affidavit of himself or of the deputy treasurer intrusted with the collection of said taxes, stating that he had made diligent search and inquiry for goods and chattels wherewith to make such

taxes, and was unable to make or collect the same. The county auditor shall deliver such list and affidavit to the board of county commissioners at their first session thereafter, and they shall cancel such taxes as they are satisfied cannot be collected. [L. '99, p. 291, § 8. Cf. L. '93, p. 355, § 73; L. '95, p. 514, § 16; L. '97, p. 171, § 72.]

See *supra*, § 11029, county credited with delinquencies.

Cited in 9 Wash. 613.

§ 11262. [9225.] Treasurer Liable for Failure to Collect, When.

If any county treasurer shall willfully refuse or neglect to collect any taxes assessed upon personal property, where the same is collectible, or to file the delinquent list and affidavit, as herein provided, he shall be held, in his next settlement with the auditor, liable for the whole amount of such taxes uncollected, and the same shall be deducted from his salary and applied to the several funds for which they were levied. [Cf. L. '93, p. 345, § 74; L. 97, p. 172, § 73.]

Cited in 76 Wash. 94.

§ 11263. [9226.] Continuation of Authority to Collect.

The power and duty to levy on property and collect any tax due and unpaid shall continue in and devolve upon the county treasurer and his successors in office after his return to the county auditor, and until the tax is paid; and the warrant attached to the assessment-roll shall continue in force and confer authority upon the treasurer to whom the same was issued, and upon his successors in office, to collect any tax due and uncollected thereon. This section shall apply to all assessment-rolls and the warrants thereto attached, which have been heretofore issued, upon which taxes may be due and unpaid, as well as those hereafter issued. [L. '93, p. 356, § 75; L. '97, p. 172, § 74.]

Cited in 9 Wash. 613.

§ 11264. [9227.] Distress and Sale—Fees.

The county treasurer, or his deputy, shall tax the same fees for making distress and sale of goods and chattels for the payment of taxes as are allowed by law to constables for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making the distress. [L. '93, p. 356, § 76; L. '97, p. 172, § 75.]

§ 11265. [9228.] Treasurer's Settlements and County Auditor's Report.

Immediately after the last day of each month, the county treasurer shall pay over to the state treasurer the amount collected by him and credited to the various state funds, but every such payment shall be subject to correction for error discovered upon the quarterly settlement next following. The county auditor shall at the same time ascertain and report to the state auditor by ordinary letter or other written memorandum, the amounts due to the various state funds. If the same be not paid to the state treasurer before the tenth day of the month he shall then make a sight draft on the county treasurer for such amount. On

the first Mondays of January, April, July, and October, respectively, of each year, the county treasurer shall make full settlement with the county auditor of his receipts and collections for all purposes from the date of the last settlement up to and including the last day of the preceding month. The county auditor shall, on or before the fifteenth day of the month in which such settlement is made, notify the state auditor of the result of the quarterly settlement with the county treasurer, as above specified. Should any county treasurer fail or refuse to honor such draft or make payment of the amount thereon (except in case of manifest error or other good and sufficient cause) he shall be guilty of non-feasance in office and upon conviction thereof shall be punished according to law. [L. '99, p. 292, § 9. Cf. L. '93, p. 356, § 77; L. '95, p. 515, § 17; L. '97, p. 172, § 76.]

Cited in 78 Wash. 340.

§ 11266. [9229.] Annual Report to County Auditor.

On the first Monday of January of each year the county treasurer shall balance up the tax-rolls in his hands and with which he stands charged on the roll of accounts of the county auditor. He shall then report to the county auditor in full the amount of taxes he has collected and specify the amount collected on each fund. He shall also report the amount of taxes that remain uncollected and delinquent upon the tax-rolls, which, with his collection and credits on account of errors and double assessments, should balance his roll accounts as he stands charged. He shall then report the amount of collections on account of interest since the taxes became delinquent, and as added by him to the original amounts when making such collections, and with which he is now to be charged by the auditor, such reports to be duly verified by affidavit. He shall also at the same time submit to the auditor his collection register, showing all taxes collected by him since the last preceding annual settlement of current and delinquent taxes. The county auditor shall thereupon proceed to compare the stub tax receipts of the treasurer with the treasurer's tax-rolls and the collection register submitted to him, and shall note if the tax-rolls are properly marked opposite each tract or tax with the date and number of the treasurer's receipt that he gave in discharge of any tax, if same is properly entered to the credit of each tract or tax described in such receipt, and if the description, amount, names and numbers and funds agree. The auditor shall also compare such receipts with the treasurer's cash-book or collection register, upon which he is required to post them, and if properly credited to the several funds, and also coincides in all respects with the tax-rolls. He shall then test the footings upon the treasurer's collection register to see that no errors have been made or frauds perpetrated. He shall then satisfy himself that the collections of the interests required to be added after taxes have become delinquent have been collected and properly accounted for, and if so to charge the treasurer with the same. If the treasurer's receipts in all respects are correct and true, and the collections fully and properly accounted for on the same, the auditor shall enter the credits and debits upon the treasurer's roll accounts and properly balance the same up to

date. [L. '99, p. 293, § 10. Cf. L. '93, p. 357, § 78; L. '95, p. 515, § 18; L. '97, p. 173, § 77.]

See *supra*, § 11029, counties to be credited with delinquent tax.

§ 11267. [9230.] Lien of Taxes.

All taxes and levies which may hereafter be lawfully imposed or assessed shall be and they are hereby declared to be a lien respectively upon the real estate upon which they may hereafter be imposed or assessed, which liens shall include all charges and expenses of and concerning the said taxes which, by the provisions of this chapter, are directed to be made. The said lien shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which said real estate may become charged or liable. [Cf. L. '93, p. 358, § 79; L. '95, p. 516, § 19; L. '97, p. 174, § 78.]

"This chapter": See note to § 11099.

See § 11272, *infra*, and notes, when lien attaches.

Cited in 14 Wash. 490; 19 Wash. 317; 26 Wash. 362; 66 Wash. 83; 78 Wash. 338; 91 Wash. 33; 92 Wash. 651, 652.

Loss or Discharge of Lien: See Remington's Digest, Tax., § 108; Bramel v. Manning, 18 Wash. 421, 51 Pac. 1050.

Property to Which Lien Attaches: See Remington's Digest, Tax., § 104; Mills v. Thurston County, 16 Wash. 378, 47 Pac. 759.

Priority as to Pre-existing Liens or Encumbrances: See Remington's Digest, Tax., § 106; McMillan v. Tacoma, 26 Wash. 358, 67 Pac. 68; Ballard v. Way, 34 Wash. 116, 74 Pac. 1067, 101 Am. St. Rep. 993; Pennsylvania Co. v. Tacoma, 36 Wash. 656, 79 Pac. 306; Ballard v. Ross, 38 Wash. 209, 80 Pac. 439; Whatcom County v. Black, 90 Wash. 280, 155 Pac. 1071; Wilson v. Korte, 91 Wash. 30, 157 Pac. 47.

Transfer of Property in General: See Remington's Digest, Tax., § 107; Mills v. Thurston County, 16 Wash. 378, 47 Pac. 759; Puyallup v. Lakin, 45 Wash. 368, 88 Pac. 578.

TAX TITLES: See Remington's Digest, Tax., §§ 177—179.

§ 177. **Estate or Interest Acquired by Purchaser or Holder of Certificate of Sale:** Gustaveson v. Dwyer, 78 Wash. 336, 139 Pac. 194; Kennedy v. Anderson, 88 Wash. 457, 153 Pac. 319.

§ 178. **Liens and Encumbrances on Property in General:** Hanson v. Carr, 66 Wash. 81, 118 Pac. 927.

§ 179. **Lien for Purchase Money in General:** Ready v. Sound Investment Co., 64 Wash. 422, 116 Pac. 1093.

Rights, as Against Persons or Property

Liable, of Other Persons Making Payment: See Remington's Digest, Tax., § 118; Farrell v. Gustin, 18 Wash. 239, 51 Pac. 372; Dunsmuir v. Port Angeles Gas etc. Co., 24 Wash. 104, 64 Pac. 1095 (overruled); Dunsmuir v. Pt. Angeles Gas etc. Co., 30 Wash. 586, 71 Pac. 9; Fischer v. Woodruff, 25 Wash. 67, 64 Pac. 923, 87 Am. St. Rep. 742; Packwood v. Briggs, 25 Wash. 530, 68 Pac. 846; Burgert v. Caroline, 31 Wash. 62, 71 Pac. 724, 96 Am. St. Rep. 889; Rotheild Bros. v. Rollinger, 32 Wash. 307, 73 Pac. 367; Dalgardno v. Barthrop, 40 Wash. 191, 82 Pac. 285; Stoll v. Griffith, 41 Wash. 37, 82 Pac. 1025; Hemen v. Rinehart, 45 Wash. 1, 87 Pac. 953; Vietzen v. Otis, 46 Wash. 402, 90 Pac. 264; Spokane v. Security Sav. Soc., 46 Wash. 150, 89 Pac. 466; Solborg v. Baldwin, 46 Wash. 196, 89 Pac. 561; Childs v. Smith, 51 Wash. 457, 99 Pac. 304, 130 Am. St. Rep. 1107; Dalgardno v. Trumbull, 61 Wash. 659, 112 Pac. 928; Vietzen v. Otis, 63 Wash. 411, 115 Pac. 858; Foley v. Oberlin Congregational Church, 67 Wash. 280, 121 Pac. 65; Egbers v. Fischer, 73 Wash. 308, 131 Pac. 1128.

Effect of Failure to Pay—Excuses for Nonpayment: See Remington's Digest, Tax., § 116; Blinn v. Grindle, 58 Wash. 679, 109 Pac. 122; Puget Sound Nat. Bank v. Biswanger, 59 Wash. 134, 109 Pac. 327.

Refunding Taxes Paid—County's Right to Recover Fraudulent Refund: See Remington's Digest, Tax., § 117; Walla Walla County v. Oregon R. & Nav. Co., 40 Wash. 398, 82 Pac. 716.

Validity and construction of statute giving priority to tax liens. Ann. Cas. 1913B, 520; Ann. Cas. 1917A, 1079; L. R. A. 1915D, 886.

Priority as between tax and purchase-money mortgage. **Ann. Cas.** 1916C, 955.

Superiority of lien for special assessments over lien for taxes. 30 **L. B. A. (N. S.)** 768.

§ 11268. [9231.] Lien, How Satisfied.

Any person being the owner or having an interest in an estate or claim to real estate against which taxes shall have been unpaid may pay the same and satisfy the lien at any time before execution of a deed to said real estate. The person or authority who shall collect or receive the same shall give a certificate that such taxes have been so paid to the person or persons entitled to demand such certificate. [Cf. **L. '93**, p. 359, § 84; **L. '97** p. 174, § 79.]

Cited in 26 **Wash.** 361.

§ 11269. [9232.] Former Sales, How Enforced.

All lots, tracts and parcels of land heretofore sold to counties for delinquent taxes, which taxes are due and remaining unpaid at the date of the approval of this act, or for the collection of which suit has been instituted, but no judgment ordering such property sold for taxes has been rendered, as shown by the register of unpaid taxes on file in the offices of the several county treasurers, shall be deemed to be delinquent; and payment of such unpaid taxes, together with penalty, interest, costs and expenses, shall be enforced under the provisions of this chapter. [**L. '93**, p. 360, § 85; **L. '97**, p. 174, § 80.]

"This chapter": See note to § 11099.

Section 20½ of **Laws of 1895**, page 520, relating to registration of delinquent taxes, is omitted as impliedly repealed by this chapter.

Cited in 49 **Wash.** 564.

§ 11270. [9233.] Occupant Paying may Collect of Owner.

When any tax on real estate is paid by or collected of any occupant or tenant, or any other person, which, by agreement or otherwise, ought to have been paid by the owner, lessor or other party in interest, such occupant, tenant or other person may recover by action the amount which owner, lessor or party in interest ought to have paid, with interest thereon at the rate of ten per cent per annum, or he may retain the same from any rent due or accruing from him to such owner or lessor for real estate on which such tax is so paid; and the same shall, until paid, constitute a lien upon such real estate. [**L. '93**, p. 360, § 86; **L. '97**, p. 175, § 81.]

Cited in 31 **Wash.** 65; 63 **Wash.** 413; 92 **Wash.** 212.

This section has no application to a

property owner paying taxes on the land of another through mistake: **Wiswell v. Beck**, 92 **Wash.** 208, 158 **Pac.** 976.

§ 11271. [9234.] Lienholders may Pay—Payment on Part of Tract.

Any person who has a lien by mortgage or otherwise, upon any real property upon which the taxes have not been paid, may pay such taxes and the interest, penalty and costs thereon; and the receipt of the county treasurer shall constitute an additional lien upon such land, to the amount therein stated; and the amount so paid and the interest thereon at the

rate specified in the mortgage or other instrument shall be collectible with, or as a part of, and in the same manner as the amount secured by the original lien. Any person desiring to pay taxes upon any part or parts of real estate heretofore or hereafter assessed as one parcel, or tract, may do so by applying to the county treasurer, who must carefully investigate and ascertain the relative or proportionate value said part bears to the whole tract assessed, and on which basis the assessment must be divided, and taxes collected accordingly: Provided, where the assessed valuation of the tract to be divided exceeds two thousand dollars, a notice by registered mail must be given to the several owners interested in said tract, if known, and if no protest against said division be filed with the county treasurer within twenty days from the date of notice, the county treasurer shall duly accept payment and issue receipt on apportionment as by him made. In cases where protest is filed to said division appeal shall be made to the county commissioners at their next regular session for final division, and the county treasurer shall accept and receipt for said taxes as determined and ordered by county commissioners. Any person desiring to pay on an undivided interest in any real property may do so by paying to the county treasurer a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole. [L. '99, p. 294, § 11. Cf. L. '93, p. 360, § 87; L. '97, p. 175, § 82.]

Cited in 24 Wash. 118; 25 Wash. 533; 38 Wash. 498; 57 Wash. 677; 58 Wash. 148.

PAYMENT AND REFUNDING OR RECOVERY OF TAX PAID: See Remington's Digest, Tax., §§ 109—114.

§ 109. Persons by Whom Payment may be Made: Packwood v. Briggs, 25 Wash. 530, 65 Pac. 846; Ball v. Clothier, 34 Wash. 399, 75 Pac. 1099; Shepard v. Vincent, 38 Wash. 493, 80 Pac. 777; Russell v. Union Machinery & Supply Co., 100 Wash. 208, 170 Pac. 565.

§ 110. Payment of Proportionate Share of Tax Assessed on Land in Gross: Moyer v. Foss, 41 Wash. 130, 83 Pac. 12; Coleman v. Security Sav. Soc., 57 Wash. 675, 107 Pac. 842.

Under this section, and § 11297, the owner of an undivided interest in land sold as a whole for delinquent taxes is entitled to a certificate of redemption therefrom on his interest, when he tenders to the county treasurer the amount due for taxes, interests and costs on his proportion of the land: State ex rel. McClaine v. Reed, 29 Wash. 383, 69 Pac. 1096.

§ 112. Receipts and Certificates: Miller & Sons v. Daniels, 47 Wash. 411, 92 Pac. 268; Puget Sound Nat. Bank v. Biswanger, 59 Wash. 134, 109 Pac. 327.

§ 113. Evidence of Payment: Graves v. Stone, 72 Wash. 382, 130 Pac. 369 (overruled); Graves v. Stone, 76 Wash. 88, 135 Pac. 810, Ann. Cas. 1915D, 182.

§ 114. Operation and Effect of Pay-

ment in General: Walla Walla County v. Oregon R. & Nav. Co., 40 Wash. 398, 82 Pac. 716; Taylor v. Debritz, 48 Wash. 373, 93 Pac. 528; Loving v. McPhail, 48 Wash. 113, 92 Pac. 944; Gleason v. Owens, 53 Wash. 483, 102 Pac. 425, 132 Am. St. Rep. 1087, 17 Ann. Cas. 819.

Voluntary Payment and Protest: See Remington's Digest, Tax., § 119; Montgomery v. Cowlitz County, 14 Wash. 230, 44 Pac. 259; Phelps v. Tacoma, 15 Wash. 367, 46 Pac. 400; Montgomery v. Cowlitz County, 14 Wash. 230, 44 Pac. 259 (overruled); Wyckoff v. King County, 18 Wash. 256, 51 Pac. 379; Tozer v. Skagit County, 34 Wash. 147, 75 Pac. 638; Owings v. Olympia, 88 Wash. 289, 152 Pac. 1019; Stimson Timber Co. v. Mason County, 97 Wash. 205, 166 Pac. 251; Pittock & Leadbetter Lumber Co. v. Skamania County, 98 Wash. 145, 167 Pac. 108; Childs v. Spokane County, 100 Wash. 64, 170 Pac. 145.

Actions and Proceedings for Recovery of Taxes Paid: See Remington's Digest, Tax., § 122; Hoexter v. Judson, 21 Wash. 646, 59 Pac. 498; Gove v. Tacoma, 26 Wash. 474, 67 Pac. 261; Carlisle v. Chelalis County, 32 Wash. 284, 73 Pac. 349; Puget Realty Co. v. King County, 50 Wash. 349, 97 Pac. 226; Spaulding v. Adams County, 79 Wash. 193, 140 Pac. 367; Stimson Timber Co. v. Mason County, 97 Wash. 205, 66 Pac. 251.

Subrogation to tax lien of person paying tax. 17 Ann. Cas. 1134; Ann. Cas. 1912B, 751; 29 L. R. A. 282.

§ 11272. [9235.] Lien, When Attaches.

The taxes assessed upon real property shall be a lien thereon from and including the first day of March in the year in which they are levied until the same are paid, but as between a grantor and grantee such lien shall not attach until the first Monday of February of the succeeding year. The taxes assessed upon personal property shall be a lien upon all the real and personal property of the person assessed, from and after the date upon which such assessment is made, and no sale or transfer of either real or personal property shall in any way affect the lien for such taxes upon such property. [L. '03, p. 74, § 3. Cf. L. '93, p. 361, § 88; L. '95, p. 520, § 21; L. '97, p. 176, § 83.]

See *supra*, § 11267, lien of taxes.

Cited in 16 Wash. 379; 22 Wash. 402; 29 Wash. 182, 186; 42 Wash. 301, 302; 51 Wash. 461; 57 Wash. 30; 58 Wash. 149; 60 Wash. 697; 71 Wash. 322, 325; 76 Wash. 94, 348; 77 Wash. 300; 83 Wash. 170; 92 Wash. 651, 652.

Time When Lien Attaches: See Remington's Digest, Tax., § 105; Phelan v. Smith, 22 Wash. 397, 61 Pac. 31; Klickitat Warehouse Co. v. Klickitat County, 42 Wash. 299, 84 Pac. 860; Puyallup v. Lakin, 45 Wash. 368, 88 Pac. 578; State v. Snohomish County, 71 Wash. 320, 128

Pac. 667; Port of Seattle v. Yesler Estate, 83 Wash. 166, 145 Pac. 209; Scandinavian American Bank v. King County, 92 Wash. 650, 159 Pac. 786.

Under this section a vendee under a conditional sale, whereby the title to personal property remained in the vendor, cannot maintain an action to restrain the distraint of the property for personal property taxes, since it is immaterial who holds the title thereto, or to whom it was assessed: Lewis Construction Co. v. King County, 60 Wash. 694, 111 Pac. 892.

§ 11273. [9236.] Duty of Transient Venders of Merchandise.

Whenever any person, firm or corporation shall, subsequent to the first day of March of any year, bring or send into any county any stock of goods or merchandise to be sold or disposed of in a place of business temporarily occupied for their sale, without the intention of engaging in permanent trade in such place, the owner, consignee or person in charge of the said goods or merchandise shall immediately notify the county assessor, and thereupon the assessor shall at once proceed to value the said stock of goods and merchandise at its true value, and upon such valuation the said owner, consignee or person in charge shall pay to the collector of taxes a tax at the rate assessed for state, county and local purposes in the taxing district in the year then current. And it shall not be lawful to sell or dispose of any such goods or merchandise as aforesaid in such taxing district until the assessor shall have been so notified as aforesaid and the tax assessed thereon paid to the collector. Every person, firm or corporation bringing into any county of this state goods or merchandise after the first day of March shall be deemed subject to the provisions of this section. [L. '97, p. 176, § 84; L. '99, p. 295, § 12.]

The proviso to this section was declared void in Nathan v. Spokane County, *infra*, and is therefore omitted.

Cited in 27 Wash. 98; 35 Wash. 31; 79 Wash. 195, 246.

Migratory Stock Tax: See Remington's Digest, Tax., § 8; Wright v. Stinson, 16 Wash. 368, 47 Pac. 761; Nathan v. Spokane County, 35 Wash. 26, 76 Pac. 521, 102 Am. St. Rep. 888, 65 L. R. A. 336.

Stock in Trade of Merchant or Manufacturer: See Remington's Digest, Tax., § 48; Spaulding v. Adams County, 79 Wash. 193, 140 Pac. 367.

Property Temporarily in Taxing District or in Transit: See Remington's Digest, Tax., § 51; Johnston v. Whatcom County, 27 Wash. 95, 67 Pac. 569.

§ 11274. [9237.] Forfeiture for Failure of Duty.

In case any such owner, consignee or person in charge of such stock of goods and merchandise as is mentioned in the foregoing section, shall fail or neglect to notify the proper assessor, or to pay the said tax as herein required, or shall proceed to sell or dispose of such stock, or any portion thereof, before the payment of the tax levied on account thereof, the owner of such goods or merchandise shall forfeit to such taxing district a sum equal to twice the amount of tax assessable as aforesaid on account of such stock. Such forfeiture may be recovered in the same manner as delinquent personal property tax in any court having jurisdiction to the amount thereof, and in such action the said penalty shall be preferred before all other debts or claims. Any mistake in the name of the owner of the said goods or merchandise shall not affect the right to recover such penalty. [L. '97, p. 176, § 85.]

§ 11275. [9238.] Duty of Treasurer in Cases of Fraud or Omission in Returns.

If the county treasurer has reason to believe or is informed that any person has given to the county assessor a false statement of his personal property, or that the county assessor has not returned the full amount of personal property required to be listed in his county, or has omitted or made erroneous return of any property which is by law subject to taxation, or if it shall come to his knowledge that there is personal property which has not been listed for taxation for the current year, he shall prepare a record setting out the facts with reference to the same and file such record with the county board of equalization at its meeting on the third Monday in April, and for this purpose it is authorized and empowered to issue compulsory process and to require the attendance of any person having knowledge of the articles or value of the property erroneously or fraudulently returned, and to examine such person on oath in relation to the statement [or] return of assessment, and the board of equalization shall in all such cases notify every such person affected before making a finding, so that such person may have an opportunity of showing that his statement or the return of the assessor is correct.

The county treasurer shall also make a record, setting forth the facts relating to such manifest errors in description, double assessments, clerical errors in extending the rolls, and such manifest errors in the listing of property which do not involve a revaluation of property such as the assessment of property exempted by law from taxation or the failure to deduct the exemption allowed by law to the head of a family as shall come to his attention after the rolls shall have been turned to him for collection.

The county board of equalization shall reconvene on the third Monday in April for the sole purpose of considering such matters as shall appear in the record filed with it by the county treasurer, and shall only correct such matters as set forth in such record, but it shall have no power to change or alter the assessment of any person, or change the aggregate value of the taxable property of the county, except in so

-far as it is necessary to correct the errors hereinbefore mentioned. The board shall make findings of the facts upon which it bases its decision on all matters submitted to it, and when so made the assessment and levy shall have the same force as made in the first instance, and the county treasurer shall proceed to collect the taxes due on the rolls as modified. [L. '15, p. 345, § 2. Cf. L. '93, p. 361, § 89; L. '95, p. 520, § 22; L. '97, p. 177, § 86.]

Cited in 22 Wash. 647.

An erroneous decision of a county treasurer in correcting errors in the assessment-roll can be reviewed by a writ of review under this section and, where

he acts without or in excess of his jurisdiction, prohibition will lie against him: State ex rel. Lewis v. Hogg, 22 Wash. 646, 62 Pac. 143.

§ 11276. [9238-1.] No Change in Values or Commuting of Tax.

That boards of county commissioners shall at no time have any authority to change the valuation of the property of any person or to release or commute in whole or in part the taxes due on the property of any person. [L. '15, p. 347, § 3.]

§ 11277. [9239.] Erroneous Proceedings not to Defeat Tax—Relisting, etc.

If any tax heretofore or hereafter levied on any property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceeding, or other cause, the amount of such tax which such property should have paid shall be added to the tax on such property for the next succeeding year, and if any tax is adjudged void for want of form or manner of procedure on the part of the taxing officers, the county commissioners shall cause such property to be placed on the assessment and tax-roll of the current year, to be collected as other taxes of that year are collected: Provided, there shall be if necessary a relisting, reassessment and a relevy of the proper tax in the manner and by the person now authorized by law to list property and levy and assess a tax: Provided further, that such relisting, relevying and sale shall take place within five years from the date such tax would have been delinquent, had such property been properly listed, assessed and tax levied thereon: Provided further, that if the question is raised in the courts as to the legality of such tax then said five years shall not commence to run until such question is finally determined by such court or courts. [Cf. L. '93, p. 362, § 90; L. '97, p. 177, § 87.]

Cited in 32 Wash. 277.

§ 11278. [9240.] Exemptions of Realty Designated.

At the time of making the assessment of real property, the assessor shall enter each description of property exempt under the provisions of section 11104, and value and list the same in the manner and subject to the same rule as he is required to assess all other property, designating in each case to whom such property belongs, and for what purpose used, to entitle it to exemption, and he shall require from every person claiming such exemption proof of the right to such exemption. [Cf. L. '93, p. 362, § 91; L. '97, p. 178, § 88.]

§ 11279. [9241.] Penalty.

Every county auditor, county assessor and county treasurer who in any case refuses or knowingly neglects to perform any duty enjoined on him by this chapter, or who consents or connives at any evasion of its provisions whereby any proceeding herein provided for is prevented or hindered; whereby any property required to be listed for taxation is unlawfully exempted, or the valuation thereof is entered on the tax-roll at less than its true cash value shall, for every such neglect, refusal, consent or connivance, forfeit and pay to the state not less than two hundred nor more than one thousand dollars, at the discretion of the court, to be recovered before any court of competent jurisdiction upon the complaint of any citizen who is a taxpayer; and the county attorney shall prosecute such suit to judgment and execution. [L. '93, p. 362, § 92; L. '97, p. 178, § 89.]

"This chapter": See note to § 11099.

§ 11280. [9242.] Counsel Fees and Expenses Allowed, When.

Whenever a civil action is commenced against any person holding the office of county treasurer, county auditor, or any other officer, for performing or attempting to perform any duty authorized or directed by any statute of this state for the collection of the public revenue, such treasurer, auditor or other officer may, in the discretion of the court before whom such action is brought, by an order made by such court and entered in the minutes thereof, be allowed and paid out of the county treasury, reasonable fees of counsel and other expenses for defending such action. [L. '93, p. 362, § 93; L. '97, p. 179, § 90.]

§ 11281. [9243.] List of Public Lands Sold to be Obtained.

The assessor of each county shall, on or before the first day of March of each year, obtain from the commissioner of public lands, and from the local land offices of the state, lists of public lands sold or contracted to be sold during the previous year in his county, and certify them for taxation, together with the various classes of state lands sold during the same year, and it shall be the duty of the commissioner of public lands to certify a list or lists of all public lands sold or contracted to be sold during the previous year, on application of the assessor of any county applying therefor. [Cf. L. '93, p. 363, § 94; L. '97, p. 179, § 91.]

§ 11282. [9244.] Blanks and Forms to be Prescribed by State Auditor, etc.

The auditor of state shall prescribe the forms of all blanks and books required under the provisions of this chapter, and, except as hereinafter provided, shall have all detail lists, schedules, assessment and tax books to be used in connection with the assessment and collection of the public revenue printed and, when necessary, bound at the expense of the state, and furnished in sufficient size and quantities to the several counties as may be required: Provided, that in preparing tax-rolls the state auditor shall follow, substantially, the following form: [See Form A, p. 3197.]

And provided further, that counties may provide their own assessment and tax-books and blanks, the expense of such books and blanks to be paid by the county. In which case the form of the assessment or tax-roll may be substantially as follows: [See Form B, page 3198.] And in that event, the county assessor shall list the property upon the assessment or tax-roll in this section provided for, and said assessment or tax-roll, together with the detail lists, shall be delivered to the county board of equalization, in the same manner and under the same certificate hereinbefore required for the detail lists, and the county board of equalization shall equalize the values of, and the county auditor shall extend the taxes levied upon the equalized valuation of said property, upon said rolls in the manner provided for in the proviso in section 11122, and such equalization and extension shall be deemed to be in lieu of and take the place of the equalization and extension herein otherwise provided for to be made upon the detail lists. The detail and assessment lists and blanks shall be in readiness for delivery to the assessor on the first Monday of March in each year. The state auditor shall decide all questions that may arise in reference to the true construction or interpretation of this chapter, or any part thereof, in connection with the advice and opinion of the attorney general of the state, and such decision shall have force and effect until annulled by the judgment or decree of a court of competent jurisdiction. [Cf. L. '93, p. 363, § 95; L. '95, p. 517, § 20; L. '97, p. 179, § 92.]

“This chapter”: See note to § 11099.

(Form A.)

SUBDIVISION OF LOT OF LAND ASSESSED

DRAIN LOT		Assessment No.	Real estate valued at.	Improvements valued at.	Personal property valued at.	Total valuation	Total levy mill.	Amount of tax.	Partial payment.	DATE OF PARTIAL PAYMENT.			Receipt No.	Amount delinquent.	DATE OF DELINQUENT.			Interest to payment.	Amount of final payment.
Year.	Book No.									Year.	Mo.	Day.			Year.	Mo.	Day.		
			\$	\$	\$	\$		\$	\$					\$				\$	

DATE OF FINAL PAYMENT		Receipt No.	Checked by	Name of owner	By whom paid
Year.	Mo.				

STATE AND COUNTY LEVIES, "CONSOLIDATED TAX."

State, general fund, _____ Mills.

State, school fund, _____ Mills.

State, military fund, _____ Mills.

State, interest fund, _____ Mills.

Total, state, _____ Mills.

County, general fund, _____ Mills.

County, interest fund, _____ Mills.

County, road and bridge fund, _____ Mills.

County, school fund, _____ Mills.

Soldiers' relief fund, _____ Mills.

Total, county, _____ Mills.

Total state and county levy, _____ Mills.

(Form B.)

No. of line	NAME OF PERSON, FIRM, COMPANY OR CORPORATION ASSESSED AS OWNERS, IF KNOWN	DESCRIPTION OF LANDS AND TOWN LOTS AND PROPERTY					No. of acres in each tract or parcel of land except lots.	No. of acres in each tract or parcel of land improved, except lots.	Name of the improved tract or parcel of land, if different from the owner of the property is situated	No. 2 or 3 or 4 or 5 or 6 or 7 or 8 or 9 or 10 or 11 or 12 or 13 or 14 or 15 or 16 or 17 or 18 or 19 or 20 or 21 or 22 or 23 or 24 or 25 or 26 or 27 or 28 or 29 or 30 or 31 or 32 or 33 or 34 or 35 or 36 or 37 or 38 or 39 or 40 or 41 or 42 or 43 or 44 or 45 or 46 or 47 or 48 or 49 or 50 or 51 or 52 or 53 or 54 or 55 or 56 or 57 or 58 or 59 or 60 or 61 or 62 or 63 or 64 or 65 or 66 or 67 or 68 or 69 or 70 or 71 or 72 or 73 or 74 or 75 or 76 or 77 or 78 or 79 or 80 or 81 or 82 or 83 or 84 or 85 or 86 or 87 or 88 or 89 or 90 or 91 or 92 or 93 or 94 or 95 or 96 or 97 or 98 or 99 or 100 or 101 or 102 or 103 or 104 or 105 or 106 or 107 or 108 or 109 or 110 or 111 or 112 or 113 or 114 or 115 or 116 or 117 or 118 or 119 or 120 or 121 or 122 or 123 or 124 or 125 or 126 or 127 or 128 or 129 or 130 or 131 or 132 or 133 or 134 or 135 or 136 or 137 or 138 or 139 or 140 or 141 or 142 or 143 or 144 or 145 or 146 or 147 or 148 or 149 or 150 or 151 or 152 or 153 or 154 or 155 or 156 or 157 or 158 or 159 or 160 or 161 or 162 or 163 or 164 or 165 or 166 or 167 or 168 or 169 or 170 or 171 or 172 or 173 or 174 or 175 or 176 or 177 or 178 or 179 or 180 or 181 or 182 or 183 or 184 or 185 or 186 or 187 or 188 or 189 or 190 or 191 or 192 or 193 or 194 or 195 or 196 or 197 or 198 or 199 or 200 or 201 or 202 or 203 or 204 or 205 or 206 or 207 or 208 or 209 or 210 or 211 or 212 or 213 or 214 or 215 or 216 or 217 or 218 or 219 or 220 or 221 or 222 or 223 or 224 or 225 or 226 or 227 or 228 or 229 or 230 or 231 or 232 or 233 or 234 or 235 or 236 or 237 or 238 or 239 or 240 or 241 or 242 or 243 or 244 or 245 or 246 or 247 or 248 or 249 or 250 or 251 or 252 or 253 or 254 or 255 or 256 or 257 or 258 or 259 or 260 or 261 or 262 or 263 or 264 or 265 or 266 or 267 or 268 or 269 or 270 or 271 or 272 or 273 or 274 or 275 or 276 or 277 or 278 or 279 or 280 or 281 or 282 or 283 or 284 or 285 or 286 or 287 or 288 or 289 or 290 or 291 or 292 or 293 or 294 or 295 or 296 or 297 or 298 or 299 or 300 or 301 or 302 or 303 or 304 or 305 or 306 or 307 or 308 or 309 or 310 or 311 or 312 or 313 or 314 or 315 or 316 or 317 or 318 or 319 or 320 or 321 or 322 or 323 or 324 or 325 or 326 or 327 or 328 or 329 or 330 or 331 or 332 or 333 or 334 or 335 or 336 or 337 or 338 or 339 or 340 or 341 or 342 or 343 or 344 or 345 or 346 or 347 or 348 or 349 or 350 or 351 or 352 or 353 or 354 or 355 or 356 or 357 or 358 or 359 or 360 or 361 or 362 or 363 or 364 or 365 or 366 or 367 or 368 or 369 or 370 or 371 or 372 or 373 or 374 or 375 or 376 or 377 or 378 or 379 or 380 or 381 or 382 or 383 or 384 or 385 or 386 or 387 or 388 or 389 or 390 or 391 or 392 or 393 or 394 or 395 or 396 or 397 or 398 or 399 or 400 or 401 or 402 or 403 or 404 or 405 or 406 or 407 or 408 or 409 or 410 or 411 or 412 or 413 or 414 or 415 or 416 or 417 or 418 or 419 or 420 or 421 or 422 or 423 or 424 or 425 or 426 or 427 or 428 or 429 or 430 or 431 or 432 or 433 or 434 or 435 or 436 or 437 or 438 or 439 or 440 or 441 or 442 or 443 or 444 or 445 or 446 or 447 or 448 or 449 or 450 or 451 or 452 or 453 or 454 or 455 or 456 or 457 or 458 or 459 or 460 or 461 or 462 or 463 or 464 or 465 or 466 or 467 or 468 or 469 or 470 or 471 or 472 or 473 or 474 or 475 or 476 or 477 or 478 or 479 or 480 or 481 or 482 or 483 or 484 or 485 or 486 or 487 or 488 or 489 or 490 or 491 or 492 or 493 or 494 or 495 or 496 or 497 or 498 or 499 or 500 or 501 or 502 or 503 or 504 or 505 or 506 or 507 or 508 or 509 or 510 or 511 or 512 or 513 or 514 or 515 or 516 or 517 or 518 or 519 or 520 or 521 or 522 or 523 or 524 or 525 or 526 or 527 or 528 or 529 or 530 or 531 or 532 or 533 or 534 or 535 or 536 or 537 or 538 or 539 or 540 or 541 or 542 or 543 or 544 or 545 or 546 or 547 or 548 or 549 or 550 or 551 or 552 or 553 or 554 or 555 or 556 or 557 or 558 or 559 or 560 or 561 or 562 or 563 or 564 or 565 or 566 or 567 or 568 or 569 or 570 or 571 or 572 or 573 or 574 or 575 or 576 or 577 or 578 or 579 or 580 or 581 or 582 or 583 or 584 or 585 or 586 or 587 or 588 or 589 or 590 or 591 or 592 or 593 or 594 or 595 or 596 or 597 or 598 or 599 or 600 or 601 or 602 or 603 or 604 or 605 or 606 or 607 or 608 or 609 or 610 or 611 or 612 or 613 or 614 or 615 or 616 or 617 or 618 or 619 or 620 or 621 or 622 or 623 or 624 or 625 or 626 or 627 or 628 or 629 or 630 or 631 or 632 or 633 or 634 or 635 or 636 or 637 or 638 or 639 or 640 or 641 or 642 or 643 or 644 or 645 or 646 or 647 or 648 or 649 or 650 or 651 or 652 or 653 or 654 or 655 or 656 or 657 or 658 or 659 or 660 or 661 or 662 or 663 or 664 or 665 or 666 or 667 or 668 or 669 or 670 or 671 or 672 or 673 or 674 or 675 or 676 or 677 or 678 or 679 or 680 or 681 or 682 or 683 or 684 or 685 or 686 or 687 or 688 or 689 or 690 or 691 or 692 or 693 or 694 or 695 or 696 or 697 or 698 or 699 or 700 or 701 or 702 or 703 or 704 or 705 or 706 or 707 or 708 or 709 or 710 or 711 or 712 or 713 or 714 or 715 or 716 or 717 or 718 or 719 or 720 or 721 or 722 or 723 or 724 or 725 or 726 or 727 or 728 or 729 or 730 or 731 or 732 or 733 or 734 or 735 or 736 or 737 or 738 or 739 or 740 or 741 or 742 or 743 or 744 or 745 or 746 or 747 or 748 or 749 or 750 or 751 or 752 or 753 or 754 or 755 or 756 or 757 or 758 or 759 or 760 or 761 or 762 or 763 or 764 or 765 or 766 or 767 or 768 or 769 or 770 or 771 or 772 or 773 or 774 or 775 or 776 or 777 or 778 or 779 or 780 or 781 or 782 or 783 or 784 or 785 or 786 or 787 or 788 or 789 or 790 or 791 or 792 or 793 or 794 or 795 or 796 or 797 or 798 or 799 or 800 or 801 or 802 or 803 or 804 or 805 or 806 or 807 or 808 or 809 or 810 or 811 or 812 or 813 or 814 or 815 or 816 or 817 or 818 or 819 or 820 or 821 or 822 or 823 or 824 or 825 or 826 or 827 or 828 or 829 or 830 or 831 or 832 or 833 or 834 or 835 or 836 or 837 or 838 or 839 or 840 or 841 or 842 or 843 or 844 or 845 or 846 or 847 or 848 or 849 or 850 or 851 or 852 or 853 or 854 or 855 or 856 or 857 or 858 or 859 or 860 or 861 or 862 or 863 or 864 or 865 or 866 or 867 or 868 or 869 or 870 or 871 or 872 or 873 or 874 or 875 or 876 or 877 or 878 or 879 or 880 or 881 or 882 or 883 or 884 or 885 or 886 or 887 or 888 or 889 or 890 or 891 or 892 or 893 or 894 or 895 or 896 or 897 or 898 or 899 or 900 or 901 or 902 or 903 or 904 or 905 or 906 or 907 or 908 or 909 or 910 or 911 or 912 or 913 or 914 or 915 or 916 or 917 or 918 or 919 or 920 or 921 or 922 or 923 or 924 or 925 or 926 or 927 or 928 or 929 or 930 or 931 or 932 or 933 or 934 or 935 or 936 or 937 or 938 or 939 or 940 or 941 or 942 or 943 or 944 or 945 or 946 or 947 or 948 or 949 or 950 or 951 or 952 or 953 or 954 or 955 or 956 or 957 or 958 or 959 or 960 or 961 or 962 or 963 or 964 or 965 or 966 or 967 or 968 or 969 or 970 or 971 or 972 or 973 or 974 or 975 or 976 or 977 or 978 or 979 or 980 or 981 or 982 or 983 or 984 or 985 or 986 or 987 or 988 or 989 or 990 or 991 or 992 or 993 or 994 or 995 or 996 or 997 or 998 or 999 or 1000	Name of plat, addition or extension	Lot or sec. tion	Block or town- ship.	Tract or range	Full value of each tract, lot or block of land assessed.	Full value of improvement on each tract, lot or block of land improvements, as returned by the assessor.	Full value of each tract, lot or block of land assessed, with improvements, as returned by the assessor.	Total value of each tract, lot or block of land assessed, with improvements, as returned by the assessor.	Consolidated tax levy.	Municipal tax levy, city or town of Kent	ROAD TAX Dist. 27, 5 mills.
1	A— B—	Cloverdale addition	1	1		\$ 40	\$	40	\$												
2	Unknown	" "	2	"		40		40													
3	" "	" "	3	"		40	100	140	220	9 64	2 20										

No. of line	SPECIAL SCHOOL TAX. Dist. 40 10 mills	SPECIAL TAX	Total amount of tax on each description or group of descriptions of property	Delinquent local assessments city or town of _____	Amount of first partial payment or installment	Date of payment of first installment	No. of receipt of receipt	Amount of tax delinquent under sec. _____	Interest to date of payment.	Amount of final payment.	Date of final payment, date of sale or of satisfaction.	No. of receipt of receipt or certificate.	Tax unpaid or property sold for years of _____	Checked by	Name of Owner.	By whom paid or to whom certificate issued.
1	\$	\$	\$	\$	\$	Mo. Day Year		\$	\$							
2																
3	2 20		7 04		3 52	2 10 1907	143			3 52	6 12 1907	1047		A and C	A B	A B

§ 11283. [9245.] Personal Tax Charged to Realty, How—Abbreviations.

When it becomes necessary, in the opinion of the county treasurer, to charge the tax on personal property against real property, in order that such personal property tax may be collected, such county treasurer shall select for that purpose some particular tract or lots of real property owned by the person owing such personal property tax, and in his tax-roll and certificate of delinquency shall designate the particular tract or lots of real property against which such personal property tax is charged, and such real estate shall be chargeable therewith. In all proceedings relative to the levy, assessment or collection of taxes, and any entries required to be made by any officer or by the clerk of the court, letters, figures and characters may be used to denote townships, ranges, sections, parts of sections, lots or blocks, or parts thereof, the year or the years for which the taxes were due, and the amount of taxes, assessments, penalties, interest and costs. Whenever the abbreviation "do," or character ".,," or any other similar abbreviations or characters shall be used in any such proceedings, they shall be construed and held as meaning and being the same name, word, initial, letters, abbreviations, figure or figures, as the last preceding such "do," and ".,," or other similar characters. [Cf. L. '93, p. 367, § 97; L. '97, p. 180, § 93.]

Cited in 34 Wash. 629; 44 Wash. 206; 76 Wash. 94; 92 Wash. 652, 653.

In an action to foreclose the county's lien for taxes under delinquency certificates, capital letters and figures standing alone may be used to describe the tracts, where they are abbreviations commonly understood in their relations to each other in the description of lands, in view of this section: *Washington Timber etc. Co. v. Smith*, 34 Wash. 625, 76 Pac. 267.

The personal property taxes of the owner of the record title to real property may be charged against the realty: *Callison v. Smith*, 44 Wash. 202, 87 Pac. 120.

The lien of personal property taxes does not attach to realty until specific realty is selected by the county treasurer and properly charged on the rolls: *Scandinavian-Am. Bank v. King County*, 92 Wash. 650, 159 Pac. 786.

§ 11284. [9246.] Removal of Personal Property to Another County.

If any person, firm or corporation shall remove from one county to another in this state personal property which has been assessed in the former county for a tax which is unpaid at the time of such removal, the treasurer of the county from which the property is removed shall certify to the treasurer of the county to which the property has been removed a statement of the tax together with all delinquencies and penalties. [L. '99, p. 43, § 1.]

§ 11285. [9247.] Delinquent Tax Certified to Other County.

The treasurer of any county of this state shall have the power to certify a statement of taxes and delinquencies of any person, firm, company or corporation, or of any tax on personal property together with all penalties and delinquencies, which statement shall be under seal and contain a transcript of the warrant of collection and so much of the tax-roll as shall affect the person, firm, company or corporation or personal property to the treasurer of any other county of this state, wherein any such person, firm, company or corporation has any real or personal property. [L. '99, p. 43, § 2.]

§ 11286. [9248.] Collection—Proceeds to County Where Assessed.

The treasurer of any county of this state receiving the certified statement provided for in sections 11284 and 11285, shall have the same power to collect the taxes, penalties and delinquencies so certified as he has to collect the personal taxes levied on personal property in his own county, and as soon as the said taxes are collected they shall be remitted, less the cost of collecting same, to the treasurer of the county to which said taxes belong, by the treasurer collecting them, and he shall return a certified copy of the certified statement to the auditor of the county to which the taxes belong, together with a certified statement of the amount remitted to the said treasurer. [L. '99, p. 44, § 3.]

§ 11287. [9249.] Distraint—Property About to be Removed or Dissipated.

Whenever in the judgment of the assessor or the county treasurer personal property is being removed or is about to be removed without the limits of the state, or is being dissipated or about to be dissipated, the treasurer shall immediately distraint sufficient of said property to pay the taxes upon all the property being removed or about to be removed, is being dissipated or about to be dissipated, together with all accruing costs with interest, and shall advertise and sell said property as provided in section 11257. [L. '07, p. 32, § 1.]

Cited in 71 Wash. 325; 101 Wash. 111.

Summary Remedies—Distress and Proceedings Thereon: See Remington's Digest, Tax., § 131; *Mills v. Thurston County*, 16 Wash. 378, 47 Pac. 759; *Bramel v. Manring*, 18 Wash. 421, 51 Pac. 1050; *Hughes v. Carr*, 101 Wash. 109, 172 Pac. 224.

Inadequacy of price is not ground for setting aside a regular sale of personal property for delinquent taxes: *J. K. Lumber Co. v. Ash*, 104 Wash. 388, 176 Pac. 550.

A sale of the personal property of a logging company consisting of a railroad, locomotives, cars and equipment at different places is not void because not made in parcels and because it was not exhibited to purchasers, where bids in parcels were called for and none received and where there was no one place where it could all have been collected for exhibition with any likelihood of attracting more bidders: *J. K. Lumber Co. v. Ash*, 104 Wash. 388, 176 Pac. 550.

§ 11288. [9250.] Computation of Tax.

If said personal property is being removed or is about to be removed from the limits of the state, is being dissipated or about to be dissipated at any time subsequent to the first day of March of any year, and prior to the levy of taxes thereon the tax upon such property so distrained shall be computed upon the rate of levy for state, county and local purposes for the preceding year. [L. '07, p. 32, § 2.]

Cited in 71 Wash. 325.

CHAPTER XIII.

CERTIFICATES OF DELINQUENCY, FORECLOSURE, TAX DEEDS, ETC.

§ 11289. [9251.] Treasurer to Carry Delinquent Taxes to Current Rolls.

The county treasurer of each county shall carry forward to the current tax-roll a memorandum of all delinquent taxes on each and every description of property, and enter the same opposite the property upon which the said taxes are delinquent, in a column provided for that purpose, showing the amounts for each year. [L. '05, p. 252, § 1.]

§ 11290. [9252.*] Certificates of Delinquency, Guaranty of Sale.

On the first business day after the expiration of the eleven months after the taxes charged against any real property are delinquent, the board of county commissioners shall determine whether it will be for the best interest of the county to carry or further carry the delinquent taxes on the books of the county or to permit certificates of delinquency for the same to be sold to any person, and should it be deemed advisable to permit the sale of certificates of delinquency they shall pass a resolution to that effect and publish a copy of the same in the next issue of the official newspaper of the county and on the first day of the month next following, the treasurer shall have the right, and it shall be his duty, upon demand and payment of the taxes and interest, to make out and issue a certificate or certificates of delinquency against such property and such certificate or certificates shall be numbered and have a stub, which shall be a summary of the certificate and shall contain a statement: (1) Description of the property assessed. (2) Year or years for which assessed. (3) Amount of tax and interest due. (4) Name of owner, or reputed owner, if known. (5) Rate of interest the certificates shall bear. (6) The time when a deed may be had, if not sooner redeemed. (7) When a certificate of any preceding year is outstanding and unredeemed, it shall be stated in subsequent certificates issued, and the principal sum due with date of issue. (8) A guaranty of the county or municipality to which the tax is due that if for any irregularity of the taxing officers this certificate be void, then such county or municipality will repay the holder the sum paid thereon with interest at the rate of six per cent per annum from the date of the issuance: Provided, that nothing herein contained shall prevent the running of interest during the said period of twelve months from the date of delinquency, at the rate of interest provided by law on delinquent taxes: Provided, further, that all certificates of delinquency sold to persons shall be registered by the county treasurer in a book provided for that purpose, in which shall also be recorded the name and address of the purchaser of each certificate of delinquency. Thereafter at any time before the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency issued to a person, the owner of the property may pay to the county treasurer the amount of taxes due for one or more subsequent years, with delinquent interest, if any, to the date of payment, and if the same shall have been paid by the holder of the certificates of delinquency the county treasurer shall forward the amount

of payment or payments made by such owner to the holder of the certificate of delinquency at his registered address. The payment of taxes for such subsequent year or years shall thereby extend the time of the foreclosure of the particular certificate of delinquency one year for each subsequent year's taxes so paid. [L. '17, p. 583, § 2; L. '97, p. 181, § 94; L. '03, p. 384, § 1; L. '07, p. 453, § 1.]

See *supra*, § 10601, auditor to record certificates.

Cited in 17 Wash. 449, 451; 19 Wash. 187; 48 Wash. 172; 49 Wash. 565; 89 Wash. 361; 90 Wash. 283; 96 Wash. 9; 100 Wash. 126; 111 Wash. 36.

Real Property Subject to Sale: See Remington's Digest, Tax., § 137; *Barker v. Muehler*, 55 Wash. 411, 104 Pac. 637.

Certificate of Delinquency Issued to Person Paying Taxes: See Remington's Digest, Tax., § 138; *State ex rel. American Sav. Union v. Whittlesey*, 17 Wash. 447, 50 Pac. 119; *Pickering v. Ball*, 19 Wash. 185, 52 Pac. 1022; *McMillan v. Ta-*

coma, 26 Wash. 358, 67 Pac. 68; *Keene v. Seattle*, 31 Wash. 202, 71 Pac. 769; *State ex rel. Craver v. McConnaughey*, 31 Wash. 207, 71 Pac. 770; *Smith v. Newell*, 32 Wash. 369, 73 Pac. 369; *Washington Timber etc. Co. v. Smith*, 34 Wash. 625, 76 Pac. 267; *Jefferson County v. Trumbull*, 34 Wash. 276, 75 Pac. 876; *Holcomb v. Johnson's Estate*, 43 Wash. 362, 86 Pac. 409; *Cavanaugh v. Roberts*, 50 Wash. 265, 97 Pac. 55; *Timmerman v. McCullagh*, 55 Wash. 204, 104 Pac. 212; *Trumbull v. Bruce*, 64 Wash. 644, 117 Pac. 472.

§ 11291. [9253.*] Interest on—Effect of Certificate.

Certificate of delinquency shall bear interest, from the date of issuance till redeemed, at the rate of twelve per cent per annum, and shall be sold to any person applying therefor, upon the payment of the value in principal and interest thereof: Provided, that when, from the failure of the taxing officers to do or perform any act in listing or assessing property, or in issuing such certificates, the same is declared void and the same is redeemed by the county or municipality issuing the same, such rate of interest shall be six per cent per annum.

Certificates of delinquency shall be prima facie evidence that—

1. The property described was subject to taxation at the time the same was assessed;
2. The property was assessed as required by law;
3. The taxes or assessments were not paid at any time before the issuance of the certificate;
4. Such certificate shall have the same force and effect as a judgment execution and sale of and against the premises included therein. [L. '17, p. 585, § 3; L. '97, p. 181, § 95.]

Cited in 17 Wash. 453; 67 Wash. 284; 69 Wash. 602; 90 Wash. 283; 111 Wash. 36.

This section reducing the rate of interest operates upon certificates issued prior to the taking effect of the act, since the

rights of the certificate holder are not contractual; but it is wholly prospective from and after the date of its taking effect: *Security Sav. Society v. Spokane County*, 111 Wash. 35, 189 Pac. 260.

§ 11292. [9254.] Foreclosure of Certificate—Procedure.

Any time after the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency, the holder of any certificate of delinquency may give notice to the owner of the property described in such certificate that he will apply to the superior court of the county in which such property is situated for a judg-

ment foreclosing the lien against the property mentioned herein. Such notice shall contain—

(1) The title of the court, the description of the property and the name of the owner thereof, if known, the name of the holder of the certificate, the date thereof, and the amount for which it was issued, the year or years for the delinquent taxes for which it was issued, the amount of all taxes paid for prior or subsequent years, and the rate of interest on said amount.

(2) A direction to the owner summoning him to appear within sixty days after service of the summons, exclusive of the day of service, and defend the action or pay the amount due, and when service is made by publication a direction to the owner, summoning him to appear within sixty days after the date of the first publication of the summons, exclusive of the day of said first publication, and defend the action or pay the amount due.

(3) A notice that, in case of failure so to do, judgment will be rendered foreclosing the lien of such taxes and costs against the land and premises named.

(4) The summons shall be subscribed by the holder of the certificate of delinquency, or by some one in his behalf, and residing within the state of Washington, and upon whom all process may be served.

(5) A copy of said notice shall be delivered to the county treasurer. Thereafter when any owner of real property or person interested therein seeks to redeem as provided in section 11297, the treasurer shall ascertain the amount of costs accrued in foreclosing said certificate and include said costs as a part of the redemption required to be paid. [L. '97, p. 182, § 96; L. '99, p. 296, § 13; L. '01, p. 383, § 1.]

Cited in 19 Wash. 317; 32 Wash. 151 503, 507; 34 Wash. 457; 35 Wash. 274; 37 Wash. 180; 38 Wash. 533, 603; 44 Wash. 204, 284; 46 Wash. 480; 49 Wash. 311; 51 Wash. 454; 54 Wash. 428; 55 Wash. 207; 58 Wash. 659; 82 Wash. 168; 96 Wash. 331; 107 Wash. 655.

ACTIONS TO FORECLOSE LIENS:
See Remington's Digest, Tax., §§ 147—161.

§ 147. Conditions Precedent: McMillan v. Tacoma, 26 Wash. 358, 67 Pac. 68; Keene v. Seattle, 31 Wash. 202, 71 Pac. 769; Peabody v. Meacham, 49 Wash. 381, 95 Pac. 322; Miller v. Henderson, 50 Wash. 200, 96 Pac. 1052; Lawrence v. Tacoma, 103 Wash. 86, 173 Pac. 1017.

Retroactive effect of law: Everett v. Adamson, 106 Wash. 355, 180 Pac. 144.

§ 148. Defenses: Smith v. Jansen, 43 Wash. 6, 85 Pac. 672; Sound Inv. Co. v. Bellingham Bay Land Co., 45 Wash. 636, 88 Pac. 1117; Solberg v. Baldwin, 46 Wash. 196, 89 Pac. 561; Loving v. McPhail, 48 Wash. 113, 92 Pac. 944.

§ 149. Time to Sue and Limitations: Allen v. Peterson, 38 Wash. 599, 80 Pac. 849.

§ 150. Parties: Whatcom County v. Fairhaven Land Co., 7 Wash. 101, 34 Pac. 563; Pennsylvania Co. v. Tacoma, 36 Wash. 656, 79 Pac. 306; Ballard v. Ross, 38 Wash. 209, 80 Pac. 439; Morrison v. Shipman, 37 Wash. 171, 79 Pac. 632; Plumb v. Dyas, 38 Wash. 240, 80 Pac. 432; Allen v. Peterson, 38 Wash. 599, 80 Pac. 849; Rowland v. Eskeland, 40 Wash. 253, 82 Pac. 599; Darnell Min. & Mill. Co. v. Ruckles, 45 Wash. 180, 88 Pac. 101; Bardon v. Hughes, 45 Wash. 627, 88 Pac. 1040; Sparks v. Standard Lumber Co., 92 Wash. 584, 159 Pac. 812; Craver v. Wehr, 98 Wash. 56, 167 Pac. 98.

§ 151. Process or Notice—In General: Woodham v. Anderson, 32 Wash. 500, 73 Pac. 536; Noland v. Arnold, 77 Wash. 363, 137 Pac. 801; Smith v. Newell, 32 Wash. 369, 73 Pac. 369; Woodward v. Taylor, 33 Wash. 1, 73 Pac. 785, 75 Pac. 616; Jefferson County v. Trumbull, 34 Wash. 276, 75 Pac. 875; Carson v. Titlow, 38 Wash. 196, 80 Pac. 299; Luff v. Gowan, 38 Wash. 504, 80 Pac. 766; Warner v. Miner, 41 Wash. 98, 82 Pac. 1033; Silverstone v. Harm, 66 Wash. 440, 120 Pac. 109.

The owner of property is chargeable with knowledge of the delinquency of

taxes and of every step in the tax foreclosure: *Larson v. Murphy*, 105 Wash. 36, 177 Pac. 657.

§ 152. — **Affidavit for Publication or Proof of Nonresidence:** *Swanson v. Hoyle*, 32 Wash. 169, 72 Pac. 1011; *Whitney v. Knowlton*, 33 Wash. 319, 74 Pac. 469; *Allen v. Peterson*, 38 Wash. 599, 80 Pac. 849; *Rowland v. Eskeland*, 40 Wash. 253, 82 Pac. 599; *Kahn v. Thorpe*, 43 Wash. 463, 86 Pac. 855; *Bardon v. Hughes*, 45 Wash. 627, 88 Pac. 1040.

In an action to set aside tax deeds, the evidence shows that plaintiff in a tax foreclosure used due diligence and was unable to locate the owner for personal service before resorting to service by publication, where it appears that diligent inquiry was prosecuted without success and that the owner had left the city without leaving any address: *Larson v. Murphy*, 105 Wash. 36, 177 Pac. 657.

§ 153. — **Summons or Notice by Publication:** *Washington Timber etc. Co. v. Smith*, 34 Wash. 625, 76 Pac. 267; *Williams v. Pittock*, 35 Wash. 271, 77 Pac. 385; *Bailey v. Hood*, 38 Wash. 700, 80 Pac. 559; *Thompson v. Price*, 37 Wash. 394, 79 Pac. 951; *Allen v. Peterson*, 38 Wash. 599, 80 Pac. 849; *Rowland v. Eskeland*, 40 Wash. 253, 82 Pac. 599; *Callison v. Smith*, 44 Wash. 202, 87 Pac. 120; *Timmerman v. McCullagh*, 55 Wash. 204, 104 Pac. 212; *Noland v. Arnold*, 77 Wash. 363, 137 Pac. 801; *Whatcom County v. Black*, 90 Wash. 280, 155 Pac. 1071; *Sparks v. Standard Lumber Co.*, 92 Wash. 584, 159 Pac. 812.

§ 154-1. — **Description of Property:** *Welch v. Beacon Place Co.*, 48 Wash. 449, 93 Pac. 923; *Stanchfield v. Blessings*, 55 Wash. 620, 104 Pac. 800; *Washington Timber etc. Co. v. Smith*, 34 Wash. 625, 76 Pac. 267; *Wick v. Rea*, 54 Wash. 424, 103 Pac. 462; *Moller v. Graham*, 101 Wash. 283, 172 Pac. 226.

The notice is insufficient where it described the property as being in "Bowman's Plat" and the evidence showed it appeared on the tax-rolls as "Bowman's C. S. H. W. F. Plat," even though there was only one "Bowman's" plat: *Moller v. Graham*, 106 Wash. 205, 179 Pac. 858.

See, also, *National Bank of Commerce v. Davies*, 112 Wash. 106, 191 Pac. 879.

§ 155. — **Time for Appearance on Publication of Summons:** *Thompson v. Robbins*, 32 Wash. 149, 72 Pac. 1043; *Smith v. White*, 32 Wash. 414, 73 Pac. 480; *Woodham v. Anderson*, 32 Wash. 500, 73 Pac. 536; *Dolan v. Jones*, 37

Wash. 176, 79 Pac. 640; *Young v. Droz*, 38 Wash. 648, 80 Pac. 810; *Stoll v. Griffith*, 41 Wash. 37, 82 Pac. 1025; *Owen v. Owen*, 41 Wash. 642, 84 Pac. 606; *Chehalis County v. France*, 44 Wash. 282, 87 Pac. 353; *McLean v. Lester*, 48 Wash. 213, 93 Pac. 208; *Bauer v. Widholm*, 49 Wash. 310, 95 Pac. 277; *Silverstone v. Totten*, 50 Wash. 447, 97 Pac. 491; *Gould v. White*, 54 Wash. 394, 103 Pac. 460; *Hembree v. McFarland*, 55 Wash. 605, 104 Pac. 837; *Thompson v. Schoner*, 58 Wash. 642, 109 Pac. 116; *Flueck v. Pedigo*, 55 Wash. 646, 104 Pac. 1119; *Noland v. Arnold*, 77 Wash. 363, 137 Pac. 801.

§ 156. — **Return and Proof of Service:** *Callison v. Smith*, 44 Wash. 202, 87 Pac. 120; *France v. Deep River Logging Co.*, 79 Wash. 336, 140 Pac. 361, Ann. Cas. 1916A, 238; *Wehr v. Craver*, 87 Wash. 214, 151 Pac. 502; *Rockwood v. Turner*, 89 Wash. 356, 154 Pac. 465.

§ 157. **Pleading:** *Whatcom County v. Fairhaven Land Co.*, 7 Wash. 101, 34 Pac. 563; *Swanson v. Hoyle*, 32 Wash. 169, 72 Pac. 1011; *Port Townsend v. Trumbull*, 40 Wash. 386, 82 Pac. 715; *Solberg v. Baldwin*, 46 Wash. 196, 89 Pac. 561; *Sound Inv. Co. v. Bellingham Bay Land Co.*, 53 Wash. 470, 102 Pac. 234.

§ 158. — **Issues, Proof and Variance:** *Whatcom County v. Fairhaven Land Co.*, 7 Wash. 101, 34 Pac. 563; *Olympia v. Stevens*, 15 Wash. 601, 47 Pac. 11; *Meagher v. Sprague*, 31 Wash. 549, 72 Pac. 108.

§ 159. **Evidence:** *Jefferson County v. Trumbull*, 34 Wash. 276, 75 Pac. 876; *Holcomb v. Johnson's Estate, In re*, 43 Wash. 362, 86 Pac. 409; *Sound Inv. Co. v. Bellingham Bay Land Co.*, 45 Wash. 636, 88 Pac. 1117; *France v. Deep River Logging Co.*, 79 Wash. 336, 140 Pac. 361, Ann. Cas. 1916A, 238.

§ 160. **Trial or Hearing:** *Washington Timber etc. Co. v. Smith*, 34 Wash. 625, 76 Pac. 267; *Moyer v. Foss*, 41 Wash. 130, 83 Pac. 12.

§ 161. **Scope and Extent of Relief:** *Whatcom County v. Fairhaven Land Co.*, 7 Wash. 101, 34 Pac. 563; *Pacific County ex rel. Lockwood v. Ellis*, 12 Wash. 108, 40 Pac. 632; *Smith v. Newell*, 32 Wash. 369, 73 Pac. 369; *Jefferson County v. Trumbull*, 34 Wash. 276, 75 Pac. 876; *Port Townsend v. Trumbull*, 40 Wash. 386, 82 Pac. 715; *Holcomb v. Johnson's Estate, In re*, 43 Wash. 362, 86 Pac. 409; *Barker v. Muehler*, 55 Wash. 411, 104 Pac. 637; *Trumbull v. Bruce*, 64 Wash. 644, 117 Pac. 472.

§ 11293. [9255.] Summons as in Civil Action.

Summons shall be served in the same manner as summons in a civil action is served in the superior court. [L. '97, p. 182, § 97.]

Cited in 96 Wash. 331.

§ 11294. [9256.] Prosecuting Attorney must Furnish Forms and Bring Action if Requested.

The county prosecuting attorney shall furnish to holders of certificates of delinquency, at the expense of the county, forms of applications for judgment, forms of summons and form of publication notices when the same are required, and shall prosecute to final judgment all actions brought by holders of certificates under the provisions of this chapter for the foreclosure of tax liens, when requested so to do by the holder of any certificate of delinquency: Provided, said holder has duly paid to the clerk of the court the sum of two dollars for each action brought as per section 11307: Provided, further, that nothing herein shall be construed to prevent said holder from employing other and additional counsel, or prosecuting said action independent of and without assistance from the prosecuting attorney, if he so desires, but in such cases, no other and further costs or charge whatever shall be allowed than the costs provided in this section and section 11307 of this chapter: And provided, also, that in no event shall the county prosecuting attorney collect any fee for the services herein enumerated. [L. '99, p. 296, § 14; L. '03, p. 338, § 1.]

"This chapter": See note to § 11099.

§ 11295. [9257.*] Foreclosure by County—Parties—Publication of Notice.

After the expiration of five years from the date of delinquency, when any property remains on the tax-rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on said property to the county, and shall file said certificates when completed with the clerk of the court, and the treasurer shall thereupon, with such legal assistance as the county commissioners shall provide in counties having a population of thirty thousand or more, and with the assistance of the county prosecuting attorney in counties having a population of less than thirty thousand, proceed to foreclose in the name of the county, the tax liens embraced in such certificates, and the same proceedings shall be had as when held by an individual: Provided, that summons may be served or notice given exclusively by publication in one general notice, describing the property as the same is described on the tax-rolls. Said certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against said property may be brought in one action and all persons interested in any of the property involved in said proceedings may be made codefendants in said action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein. The names of the person or persons appearing on the treasurer's rolls as the owner or owners of said property for the purpose of this chapter shall be considered and treated as the owner or owners of said property, and if upon said treasurer's rolls it appears that the owner or owners of said property are unknown, then said property shall be proceeded

against, as belonging to an unknown owner or owners as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of said proceedings and of any and all steps thereunder. The publication of the summons or notice required by this section shall be made by the county treasurer in the official newspaper of the county: Provided, the price charged by any such newspaper for such publication, for the whole number of issues, shall not exceed in any case the price stated in the contract of the county with such newspaper for county printing, and that, if such publication cannot be made in said newspaper at said price, the county treasurer may cause such publication to be made in any other newspaper printed, published and of general circulation in the county, at a cost for the whole number of issues not to exceed in any case the maximum rate for county printing fixed by contract for such year. [L. '17, p. 417, § 1; L. '97, p. 182, § 98; L. '99, p. 297, § 15; L. '01, p. 385, § 3.]

"This chapter": See note to § 11099.

Cited in 17 Wash. 456; 34 Wash. 283, 284, 634; 50 Wash. 267; 51 Wash. 455, 456; 53 Wash. 201, 202; 56 Wash. 174; 74 Wash. 13; 78 Wash. 337, 340; 82 Wash. 169; 88 Wash. 562, 563; 90 Wash. 284; 96 Wash. 330; 101 Wash. 286; 106 Wash. 207.

§ 135. **List of Lands Delinquent**—Publication: See Remington's Digest, Tax., § 135; Vestal v. Morris, 11 Wash. 451, 39 Pac. 960; Washington Timber etc.

Co. v. Smith, 34 Wash. 625, 76 Pac. 267; Tremmel v. Mess, 46 Wash. 137, 89 Pac. 487.

— **Authority to Publish:** See Remington's Digest, Tax., § 136; State ex rel. Whatcom County v. Purdy, 14 Wash. 343, 44 Pac. 857; De Rackin v. Lincoln County, 19 Wash. 360, 52 Pac. 351; Olympian-Tribune Pub. Co. v. Byrne, 28 Wash. 79, 68 Pac. 335.

§ 11296. [9258.] Interested Person may Pay Before Execution of Deed, etc.

Any person owning an interest in lands or lots upon which judgment is prayed, as provided in this chapter, may in person or by agent pay the taxes, assessment, penalties, interest and costs due thereon to the county treasurer of the county in which the same are situated, at any time before the execution of the deed; and for the amount so paid he shall have a lien on the property liable for taxes, assessments, penalties, interest and costs for which judgment is prayed; and the person or authority who shall collect or receive the same shall give a receipt for such payment, or issue to such person a certificate showing such payment. [L. '97, p. 183, § 99.]

"This chapter": See note to § 11099.

Cited in 31 Wash. 553; 66 Wash. 84; 92 Wash. 590.

§ 11297. [9259.*] Redemption—Penalty and Interest.

Real property upon which certificates of delinquency have been issued under the provisions of this chapter, may be redeemed at any time before the issuance of tax deed, by payment, in legal money of the United States, to the county treasurer of the proper county, for the benefit of the owner of the certificate of delinquency against said property, the amount for which same was sold, together with interest at twelve per cent per annum thereon from date of issuance of said certificate of delinquency until paid.

The person redeeming such property shall also pay the amount of all taxes, assessments, penalties, interest and costs accruing after the issuance of such certificate of delinquency, and paid by the holder of said certificate of delinquency or his assignee, together with twelve per cent interest on such payment from the day the same were made. No fee shall be charged for any redemption after the passage of this act. Tenants in common or joint tenants shall be allowed to redeem their individual interest in real property for which certificates of delinquency have been issued under the provisions of this chapter, in the manner and under the terms specified in this section for the redemption of real property other than that of insane persons and minor heirs. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject however, to the right of the person making the same to be reimbursed by the person benefited. If the real property of any minor heir, or any insane person, be sold for nonpayment of taxes or assessments, the same may be redeemed at any time after sale and before the expiration of one year after such disability has been removed upon the terms specified in this section on the payment of interest at the rate of twelve per cent per annum on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner shall pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or by any person in their behalf. [L. '17, p. 585, § 4; L. '99, p. 298, § 17. Cf. L. '93, p. 378, § 121; L. '95, p. 523, § 25; L. '97, p. 184, § 102.]

"This chapter": See note to § 11099.

Redemption for city tax sale, see *supra*, § 9387.

Cited in 43 Wash. 468; 71 Wash. 532; 92 Wash. 590; 102 Wash. 48, 49; 111 Wash. 36.

REDEMPTION FROM TAX SALE: See Remington's Digest, Tax., §§ 168—176.

§ 168. Constitutional and Statutory Provisions: Seattle Land & Improvement Co. v. Blum, 71 Wash. 530, 128 Pac. 1066.

§ 169. Right to Redeem in General: Kahn v. Thorpe, 43 Wash. 463, 86 Pac. 855.

§ 170. Persons Entitled to Redeem: State ex rel. McClaine v. Reed, 29 Wash. 383, 69 Pac. 1096; Meagher v. Sprague, 31 Wash. 549, 72 Pac. 108; Burdick v. Kimball, 53 Wash. 198, 101 Pac. 845; Seattle Land & Improvement Co. v. Blum, 71 Wash. 530, 128 Pac. 1066.

§ 171. Waiver or Estoppel: Gould v. White, 54 Wash. 394, 103 Pac. 460.

§ 172. Time for Redemption: State ex rel. Taylor v. Maple, 16 Wash. 430, 47 Pac. 966; State ex rel. Race v. Craney, 30 Wash. 594, 71 Pac. 50; State ex rel. Abrashin v. Terry, 74 Wash. 208, 133 Pac. 386.

§ 173. Amount Required to Redeem: State ex rel. Savings Union v. Whittlesey, 17 Wash. 447, 50 Pac. 119; State ex rel. McClaine v. Reed, 29 Wash. 383, 69 Pac. 1096; Gould v. White, 62 Wash. 406, 114 Pac. 159.

§ 174. Payment or Tender: State ex rel. McClaine v. Reed, 29 Wash. 383, 69 Pac. 1096; Stockand v. Hall, 54 Wash. 106, 102 Pac. 1037; Seattle Land & Improvement Co. v. Blum, 71 Wash. 530, 128 Pac. 1066.

See, also, notes to § 11271, *supra*.

§ 175. Certificate of Redemption: Coleman v. Security Sav. Soc., 57 Wash. 675, 107 Pac. 842.

§ 176. Operation and Effect: Trumbull v. Bruce, 64 Wash. 644, 177 Pac. 472.

Sufficiency of notice with respect to statement as to expiration of time to redeem from tax sale. Ann. Cas. 1917A, 243.

Constitutionality of statute extending time to redeem from tax sale. 2 Ann. Cas. 801; 1 A. L. R. 143.

§ 11298. [9260.] Judgment and Order of Sale for Taxes.

The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of said lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or said court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as it may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases said court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, assessments, and penalties, interest and cost thereon, all amendments which by law can be made in any personal action pending in such court, and no assessments of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment-rolls or on account of the assessment-rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name or any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment-rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, assessments, penalties, interest and cost as shall appear to be due upon the several lots or tracts described in said notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax or assessment included therein, including all penalties, interest and costs, and the court shall order and direct the clerk to make out and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. Said order shall be signed by the judge of the superior court and attested by the clerk thereof, and a certified copy of said order, together with the list of the property therein ordered sold, shall be delivered to the county treasurer, and shall be full and sufficient authority for him to proceed to sell said property or so much of each tract or lot as may be necessary for said sum as set forth in said order and to take such further steps in the matter as are provided by law: Provided, however, that before such sale shall be held, the county treasurer shall notify the record owner of such real estate of the pending sale, or in case of unknown owner shall post a notice of same in some public place at the county courthouse. The county treasurer shall immediately after receiving the order and judg-

ment of the court proceed to sell said property as provided in this act. All sales shall be made on Saturday between the hours of 9 o'clock in the morning and 4 o'clock in the afternoon, and shall continue from day to day (Sundays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time and place where such sale is to take place for ten days successively by posting notice thereof in three public places in such county, one of which shall be in the office of said treasurer. Said notice shall be substantially in the following form:

TAX JUDGMENT SALE.

Public notice is hereby given that pursuant to real estate tax judgment of the superior court of the county of —, in the state of Washington, and an order of sale duly issued by said court, entered the — day or —, —, in proceedings for foreclosure of tax liens upon real estate, as per provisions of law, I shall on the — day of —, —, at — o'clock —, at the front door of the courthouse in the city of —, and county of —, state of Washington, sell the following described land or lots, or so much of each of them as shall be sufficient to satisfy the full amount of taxes, assessments, penalties, interest, and costs adjudged to be due thereon as follows, to wit: (Description of property).

In witness whereof, I have hereunto affixed by hand and seal this — day of —, —.

— —,
Treasurer of — county,
State of Washington.

The person at such sale offering to pay the amount on each tract or lot for the least quantity thereof shall be the purchaser of such quantity, which shall be taken from the easterly side of such tract or lot, and the remainder thereof shall be discharged from the lien, except when said easterly side of such tract or lot abuts upon or is the natural outlet to the public highway; in which event, such quantity shall be taken from the northerly and southerly side of such tract or lot at the option of the purchaser at such sale: Provided, that no county officer shall directly or indirectly be a purchaser of such property at such sale. In determining such piece or parcel or such tract or lot, a line is to be drawn northerly and southerly, or easterly and westerly as the case may be, parallel to the boundary of the tract or lot on the side from which the portion is sold under this proceeding and far enough therefrom to make the requisite quantity. The treasurer may include in one notice any number of separate tracts or lots. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his office, shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington, }
County of —, } ss.

This indenture, made this — day of —, —, between —, as treasurer of — county, state of Washington, party of the first part, and —, party of the second part:

Witnesseth, that, whereas, at a public sale of real estate held on the — day of —, —, pursuant to a real estate tax judgment entered in the superior court in the county of — on the — day of —, —, in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said court, — duly purchased in compliance with the laws of the state of Washington, the following described real estate, to wit: (Here place description of real estate conveyed) and that said — has complied with the laws of the state of Washington necessary to entitle (him, her or them) to a deed for said real estate.

Now, therefore, know ye, that, I —, county treasurer of said county of —, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto —, his heirs and assigns, forever, the said real estate hereinbefore described.

Given under my hand and seal of office this — day of —, A. D., —.

—, —,
County Treasurer.

[L. '09, p. 620, § 1. Cf. L. '99, p. 299, § 18; L. '92, p. 370, § 105; L. '97, p. 184, § 103. See, also, L. '03, p. 77, § 5.]

Cited in 16 Wash. 434; 28 Wash. 99; 34 Wash. 285; 69 Wash. 604; 78 Wash. 337, 340; 107 Wash. 653, 655.

Form and Requisites of Judgment: See Remington's Digest, Tax., § 162; Whatcom County v. Fairhaven Land Co., 7 Wash. 101, 34 Pac. 563; Swanson v. Hoyle, 32 Wash. 169, 72 Pac. 1011; Washington Timber etc. Co. v. Smith, 34 Wash. 625, 76 Pac. 267; Warner v. Miner, 41 Wash. 98, 82 Pac. 1033; Callison v. Smith, 44 Wash. 202, 87 Pac. 120; Stevens v. Doohen, 50 Wash. 145, 96 Pac. 1032; Trumbull v. Jefferson County, 62 Wash. 503, 114 Pac. 186; State ex rel. Everett v. Superior Court, 99 Wash. 169, 169 Pac. 22.

Conclusiveness of Adjudication and Collateral Attack: See Remington's Digest, Tax., § 163, and cases cited.

The burden is upon the one who asserts the invalidity of a tax title to overcome the deed by competent and controlling evidence: Larson v. Murphy, 105 Wash. 36, 177 Pac. 657.

Notice of Sale in General: See Remington's Digest, Tax., §§ 139—142.

§ 139. **Place of Sale:** Trumbull v. Jefferson County, 62 Wash. 503, 114 Pac. 186.

§ 140. **Notice of Sale:** Vestal v. Morris, 11 Wash. 451, 39 Pac. 960.

The county treasurer must by the express provision of this section notify the "record owner" of the property of the pending sale; "record owner" being employed in its usual and common meaning: Okanogan Power & Irr. Co. v. Quackenbush, 107 Wash. 651, 182 Pac. 618, 5 A. L. R. 966.

§ 141. **Amount for Which Land may be Sold:** Rothchild Bros. v. Rollinger, 32 Wash. 307, 73 Pac. 367; Gove v. Tacoma, 34 Wash. 434, 76 Pac. 73; Dwight v. Waldron, 96 Wash. 156, 164 Pac. 761.

See, also, National Bank of Commerce v. Davies, 112 Wash. 106, 191 Pac. 879.

§ 142. **Persons Who may Purchase:** Coughlin v. Holmes, 53 Wash. 92, 102 Pac. 772; Maher v. Potter, 60 Wash. 443, 111 Pac. 453; Burgess v. Peth, 79 Wash. 298, 140 Pac. 351; Whitaker v. Ellis, 102 Wash. 43, 172 Pac. 881.

See, also, Okanogan Power & Irrig. Co. v. Quackenbush, 107 Wash. 651, 182 Pac. 618, 5 A. L. R. 966.

Report or Return and Record of Sale: See Remington's Digest, Tax., § 143, and cases cited.

Certificate of Sale: See Remington's Digest, Tax., § 144; Meagher v. Sprague, 31 Wash. 549, 72 Pac. 108; Barker v. Muehler, 55 Wash. 411, 104 Pac. 637.

Setting Aside Sale: See Remington's Digest, Tax., § 145; Gove v. Tacoma, 34 Wash. 434, 76 Pac. 73.

§ 11299. [9261.] Appeals to Supreme Court.

Appeals from the judgment of the court may be taken to the supreme court at any time within thirty days after the rendition of said judgment by giving notice thereof orally in open court at the time of the rendition of the judgment, or by giving written notice thereof at any time thereafter, and within thirty days from the date of the rendition of such judgment, and the party taking such appeal shall execute, serve and file a bond payable to the state of Washington, with two or more sureties, to be approved by the court, in an amount to be fixed by the court, conditioned that the appellant shall prosecute his said appeal with effect, and will pay the amount of any taxes, assessments, penalties, interest and costs which may be finally adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause, which bond shall be so served and filed at the time of the service of said notice of appeal, and the respondent may, within five days after the service of such bond, object to the sureties thereon, or to the form and substance of such bond, in the court in which the action is pending, and if, upon hearing of such objections to said bond, it is determined by the court that the sureties thereon are insufficient for any reason, or that the bond is defective for any other reason, the court shall direct a new bond to be executed with sureties thereon, to be justified before the court as in bail upon arrest but no appeal shall be allowed from any judgment for the sale of land or lot for taxes, and no bond given on appeal as herein provided shall operate as a supersedeas, unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the county treasurer of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty per cent, and shall order that the amount deposited with the treasurer as aforesaid, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerk of the supreme court shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided,

the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with him, as aforesaid, and the county clerk shall credit the same judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in said proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, penalties, interest and costs, or any part thereof, in said proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made. [L. '03, p. 74, § 4. Cf. L. '93, p. 372, § 106; L. '97, p. 186, § 104.]

Cited in 11 Wash. 705; 28 Wash. 332; 51 Wash. 184; 53 Wash. 249, 250, 251, 31 Wash. 304; 32 Wash. 212; 36 Wash. 252.
102, 104; 41 Wash. 643; 50 Wash. 685;

§ 11300. [9262.*] Forfeitures—Subsequent Certificates—Exception.

Every purchaser of a certificate of delinquency shall before applying for judgment, pay all taxes that have accrued on the property included in said certificate since the issuance of said certificate or any prior taxes that may remain due and unpaid on said property and any purchaser of delinquent certificates that shall suffer a subsequent tax to become delinquent and a subsequent certificate of delinquency to issue on the same property included in his certificate, such first purchaser shall forfeit his rights thereunder to the subsequent purchaser, and such subsequent purchaser shall at the time of obtaining his certificate redeem said first certificate of delinquency outstanding by depositing with the county treasurer the amount of said first certificate with interest thereon to the date of said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of delinquency and draw interest at the rate of twelve per cent per annum from the date of payment. Said holder of a certificate of delinquency permitting a subsequent certificate to issue on the same property, shall, on notice from the county treasurer, surrender said certificate of delinquency on payment to him of the redemption money paid by the subsequent purchaser: Provided, that this section shall not apply to counties or municipalities. [L. '17, p. 586, § 5; L. '99, p. 302, § 20. Cf. L. '93, p. 378, § 122; L. '97, p. 188, § 107.]

Cited in 16 Wash. 136, 436; 18 Wash. 337; 34 Wash. 457; 64 Wash. 648; 90 Wash. 282, 284; 91 Wash. 425; 102 Wash. 48; 111 Wash. 36.

§ 11301. [9263.] Books as Evidence—Treasurer shall Turn Over Moneys to Successor.

The books and records belonging to the office of county treasurer, certified by said treasurer, shall be deemed prima facie evidence to prove

the issuance of any certificate, the sale of any land or lot for taxes or assessments, the redemption of the same or payment of taxes or assessments thereon. The county treasurer shall, at the expiration of his term of office, pay over to his successor in office all moneys in his hands received for redemption from sale for taxes on real estate. [L. '93, p. 379, § 123; L. '97, p. 189, § 108.]

§ 11302. [9264.] **Erroneous Sale.**

Whenever it shall be made to appear to the satisfaction of a county treasurer that any tract or lot was sold which was not subject to be taxed or upon which taxes or assessments have been paid previous to the sale, he shall make an entry opposite to such tracts or lots in the sale or redemption record that the same was erroneously sold, and such entry shall be prima facie evidence of the fact therein stated. [L. '93, p. 379, § 124; L. '97, p. 189, § 109.]

Cited in 67 Wash. 327.

§ 11303. [9265.] **Effect of Redemption.**

The receipt of the redemption money of any tract or lot by any purchaser, or by the county treasurer for the benefit of such purchaser or the return of the certificate of delinquency for cancellation, shall operate as a release of all the claims to said tract under or by virtue of the issuance of said certificate of delinquency, and the county treasurer, upon the receipt of any such redemption money, shall immediately indorse upon the proper records the fact that such taxes, penalties, interest and cost have been paid and the property therein described redeemed by said payment, and shall deliver to the person redeeming the same a certificate of redemption therefor. [L. '99, p. 303, § 22. Cf. L. '93, p. 379, § 126; L. '97, p. 190, § 111.]

Cited in 64 Wash. 647.

§ 11304. [9266.] **Costs of Publication.**

In case any person shall be compelled to publish a notice in a newspaper under the provisions of this chapter, then, before any person who may have a right to redeem lands or lots from sale shall be permitted to redeem, he shall pay to the officer who by law is authorized to receive such redemption money the amount paid for publishing such notice for the use of the person compelled to publish such notice, as aforesaid, the fee for such publication. [Cf. L. '93, p. 381, § 129; L. '97, p. 190, § 112.]

"This chapter": See note to § 11099.

§ 11305. [9267.] **Deeds Prima Facie Evidence.**

Deeds executed by the county treasurer, as aforesaid, shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the real estate thereby conveyed of the following facts:—

First: That the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law;

Second: That the taxes or assessments were not paid at any time before the issuance of deed;

Third: That the real estate conveyed had not been redeemed from the sale at the date of the deed;

Fourth: That the real estate was sold for taxes, assessments, penalties and costs, as stated in the deed;

Fifth: That the grantee in the deed was the purchaser, or assignee of the purchaser;

Sixth: That the sale was conducted in the manner required by law.

And any judgment for the deed to real estate sold for delinquent taxes rendered after the passage of this act, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or assessments have been paid, or the real estate was not liable to the tax or assessment. [Cf. L. '93, p. 382, § 132; L. '97, p. 190, § 114.]

See supra, § 162, limitation on actions to cancel tax deed.

See supra, § 786, and notes, limitations of actions affecting tax deeds.

See supra, § 955, action to enjoin collection of taxes.

See supra, § 1261, certified copy of tax deed as evidence.

See supra, § 4125, authentications under seal of treasurer.

See supra, § 4126, validating prior deeds without seal.

See supra, § 10550, and notes, conveyances of real estate.

See infra, § 11311, form of deed.

Cited in 17 Wash. 608; 34 Wash. 637; 35 Wash. 278, 281; 38 Wash. 198; 40 Wash. 256; 41 Wash. 42; 43 Wash. 7; 44 Wash. 48; 46 Wash. 200; 47 Wash. 694, 695; 49 Wash. 384, 568, 570; 67 Wash. 327; 69 Wash. 605; 92 Wash. 586; 101 Wash. 292.

Effect as Evidence: See Remington's Digest, Tax., § 193; Hurd v. Brisner, 3 Wash. 1, 28 Pac. 371, 28 Am. St. Rep. 17; McInerney v. Beck, 10 Wash.

515, 39 Pac. 130; Baer v. Choir, 7 Wash. 631, 32 Pac. 776, 36 Pac. 286; Ward v. Huggins, 7 Wash. 617, 32 Pac. 740, 1015, 36 Pac. 285; Vestal v. Morris, 11 Wash. 451, 39 Pac. 960; Herrick v. Niesz, 16 Wash. 74, 47 Pac. 414; State ex rel. American Savings Union v. Whittlesey, 17 Wash. 447, 50 Pac. 119; Spokane Term. Co. v. Stanford, 44 Wash. 45, 87 Pac. 37.

§ 11306. [9268.] Procedure as to Taxes of Former Years.

All lots, tracts, and parcels of land upon which taxes remain due and unpaid at the date of the approval of this act, except the taxes for the year 1898, shall be deemed to be delinquent under the provisions of this act, under [and] the same proceedings may be had to enforce the payment of such unpaid taxes, with penalty, interest and cost, and payment enforced and liens foreclosed under and by virtue of the provisions of this act. For purposes of foreclosure under this act, the date of delinquency shall be construed to mean the date when the taxes first became delinquent; Provided, that on all certificates of delinquency issued for the taxes of 1895 and prior years, proceedings for foreclosure under the provisions of this act may commence on and after December 1, 1900,

and not sooner; and on certificates of delinquency for 1895, and prior years, held by the county, proceedings must be commenced on or before the first day of January, 1902, by the several county treasurers under the provisions of this act. At all sales of property for which certificates of delinquency are held by the county if no other bids are received, the county shall be considered a bidder for the full area of each tract or lot to the amount of all taxes, penalties, interests and costs due thereon, and where no bidder appears, acquire title thereto as absolutely as if purchased by an individual under the provisions of this act; "all bidders except the county at sales of property for which certificates of delinquency are held by the county shall pay the full amount of taxes, penalties, interests and costs for which judgment is rendered, together with all taxes, interests, [and] costs for all subsequent years due on said property at the date of sale." [L. '01, p. 386, § 4. Cf. L. '93, p. 385, § 136; L. '97, p. 192, § 116; L. '99, p. 303, § 24.]

"This act," the general revenue act of 1899 as amended.

Cited in 9 Wash. 612; 44 Wash. 283; 78 Wash. 337, 340; 83 Wash. 306, 312; 106 Wash. 208.

Where, in a general county foreclosure of delinquent taxes for a certain year, the published description in the summons did not describe the property the same

as on the tax-rolls for that year, the foreclosure is not rendered valid by the fact that the property was described on the tax-rolls for subsequent years the same as in the published notice, although this section requires the plaintiff to pay such subsequent taxes: *Moller v. Graham*, 106 Wash. 205, 179 Pac. 858.

§ 11307. [9269.] Fees of Officers.

(1) The treasurer shall upon the issuance of a certificate of delinquency collect fifty cents. (2) For making a deed, to include not more than ten tracts or lots, including all services rendered, including sales and posting notices, three dollars. (3) The clerk of the court shall upon filing application for judgment and for all services rendered to and including judgments, collect two dollars. (4) The clerk of the court shall collect from each contestant at time of filing such contest, five dollars. [L. '97, p. 193, § 119; L. '99, p. 304, § 26.]

• § 11308. [9270.] Property Deeded to County, not to be Assessed.

All property deeded to the county under the provisions of this act shall be stricken from the tax-rolls as county property and exempt from taxation and shall not be again assessed or taxed while the property of the county. [L. '99, p. 304, § 27.]

§ 11309. [9271.] Proceeds of Sale of Property for Taxes.

No claims shall ever be allowed against the county from any municipality, school district, road district or other taxing district for taxes levied on property acquired by the county by tax deed under the provisions of this act, but all taxes shall at the time of deeding said property be thereby canceled: Provided, that the proceeds of any sale of any property acquired by the county by tax deed shall be justly apportioned to the various funds existing at the date of the sale, in the

territory in which such property is located, according to the tax levies of the year last in process of collection. [L. '99, p. 304, § 28.]

Cited in 78 Wash. 340; 83 Wash. 312.

§ 11310. [9272.] Resale of Tax Title Lands Acquired by County.

Real property hereafter or heretofore acquired by the several counties of the state of Washington for taxes shall be subject to sale by order of the board of county commissioners of the several counties of this state at any time after the counties shall have received a deed therefor, when in the judgment of the board of county commissioners they deem it for the best interests of the county to sell the same, and when the board of county commissioners desires to sell any property so acquired, they shall enter an order upon their records directing the county treasurer to sell such portions of such property as they may determine to sell from time to time, and it shall be the duty of the county treasurer upon receipt of such order to publish a notice of the sale of such property in a weekly newspaper printed and published in the county where the land is situated for three consecutive publications: Provided, that in counties where there is no newspaper published, the treasurer of such county shall cause such notice to be published in some newspaper in the state of general circulation in such county having no resident newspaper, and the property to be sold shall be set forth and described in said notice, together with the time and place and terms of sale, which said sale shall be made at the door of the county courthouse in the county in which the land is situated between the hours of 9 o'clock A. M. and 4 o'clock P. M., and all sales so made shall be for cash to the highest and best bidder at such sale, and sales to be made under the provisions of this act may be adjourned from day to day by the county treasurer by public announcement made by the treasurer at the time and place designated in the notice of such sale, or at the time and place to which said sale may be adjourned, and the county treasurer shall make and execute under his hand and seal to the purchaser of the property at such sale a deed: Provided, further, that all sales now being made under existing laws shall be completed according to the laws in existence and in force prior to the passage of this act. [L. '99, p. 305, § 29; L. '03, p. 73, § 1.]

"This act": See note to § 11306.

Cited in 68 Wash. 179; 78 Wash. 337, 340.

Under this section the county commissioners have power to order a sale fixing a minimum price below which bids will not be received; and were it otherwise the restriction could not be treated as surplusage, and a sale for a less sum upheld, since the board did not exercise its discretion to order an unqualified sale: State ex rel. Mackay v. Phillips, 36 Wash. 651, 79 Pac. 313.

The board of county commissioners, as the business managers of the county, have the power in ordering sales of county property, to require that the sales shall be subject to their approval, under

this section: Phillips v. Welts, 40 Wash. 501, 82 Pac. 737.

A bid for county real estate, offered for sale at public auction, does not constitute a contract which can be specifically enforced, where the county treasurer refused to accept the bid or strike off the property: McPherson Bros. Co. v. Okanogan County, 45 Wash. 285, 88 Pac. 199, 9 L. R. A. (N. S.) 748.

Upon an auction sale of county real property, the county treasurer has discretionary power to refuse to accept a bid which in his judgment is not made in good faith or would sacrifice the property: McPherson Bros. Co. v. Okanogan County, 45 Wash. 285, 88 Pac. 199, 9 L. R. A. (N. S.) 748.

§ 11311. [9273.] Deed of Treasurer—Form.

The county treasurer shall issue a deed in the following form for all lots or parcels of real estate sold under the provisions of the act:

State of Washington, }
County of —, } ss.

This indenture, made this — day of —, 19—, between — as treasurer of — county, state of Washington, the party of the first part, and —, party of the second part:

Witnesseth, that whereas, at a public sale of real estate, held on the — day of —, A. D. 19—, pursuant to an order of the board of county commissioners of the county of —, state of Washington, duly made and entered, and after having first given due notice of the time, and place and terms of said sale, and, whereas, in pursuance of said order of the said board of county commissioners, and of the laws of the state of Washington, and for and in consideration of the sum of — dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to — the following described real estate, and which said real estate is the property of — county, and which is particularly described as follows, to wit: —, the said — being the highest and best bidder at said sale, and the said sum being the highest and best sum bid at said sale:

Now, therefore, know ye that I, —, county treasurer of said county of —, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant and convey unto —, — heirs and assigns, forever, the said real estate hereinbefore described, as fully and completely as the said party of the first part can by virtue of the premises convey the same.

Given under my hand and seal of office this — day of —, A. D. 190—.

— —,
County Treasurer.
By —, Deputy.

[L. '03, p. 76, § 5.]

"This act," chapter 59 of the laws of 1903.

It is doubtful if this section is in force, for there is no mention of this subject in the title of the act unless it can be construed as "amending § 29" (the last previous section), which was already expressly amended by § 1 of the act. This was the evident intention, and the same is therefore retained.

See *supra*, §§ 4125, 4126, seal of treasurer, and validation of former deeds without seal.

See also, *supra*, § 11305.

Cited in 83 Wash. 313.

TAX DEEDS: See Remington's Digest, Tax., §§ 180—192.

Authority and Duty to Make: Ward v. Huggins, 7 Wash. 617, 32 Pac. 740, 1015, 36 Pac. 285; Silverstone v. Norton, 50 Wash. 531, 97 Pac. 663.

§ 181. Notice to Owner of Application for Deed: Ford v. Durie, 8 Wash. 87, 35

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Pac. 595, 1082; Herrick v. Niesz, 16 Wash. 74, 47 Pac. 414; Woodward v. Taylor, 33 Wash. 1, 73 Pac. 785, 75 Pac. 646.

§ 182. Mandamus to Compel: State ex rel. Race v. Cranney, 30 Wash. 594, 71 Pac. 50.

§ 183. Form and Contents: Ward v. Huggins, 7 Wash. 617, 32 Pac. 740, 1015,

36 Pac. 285; *Stockand v. Hall*, 45 Wash. 197, 88 Pac. 123; *State ex rel. Heath v. Olson*, 45 Wash. 689, 89 Pac. 151; *Huber v. Brown*, 57 Wash. 654, 107 Pac. 850.

§ 184. **Parties:** *McInerney v. Beck*, 10 Wash. 515, 39 Pac. 130.

§ 185. **Recitals:** *Stull v. De Mattos*, 23 Wash. 71, 62 Pac. 451, 51 L. R. A. 892; *Rowland v. Eskeland*, 40 Wash. 253, 82 Pac. 599; *Stoll v. Griffith*, 41 Wash. 37, 82 Pac. 1025.

§ 186. **Description of Property:** *Ontario Land Co. v. Yordy*, 44 Wash. 239, 87 Pac. 257; *Miller & Sons v. Daniels*, 47 Wash. 411, 92 Pac. 268; *Lara v. Peterson*, 56 Wash. 70, 105 Pac. 160; *Northern Pac. R. Co. v. Smith*, 68 Wash. 269, 122 Pac. 1057; *Kennedy v. Anderson*, 88 Wash. 457, 153 Pac. 319.

§ 187. **Execution:** *Huber v. Brown*, 57 Wash. 654, 107 Pac. 850; *France v. Deep River Logging Co.*, 79 Wash. 336, 140 Pac. 361, Ann. Cas. 1916A, 238.

A deed is not prematurely executed although dated on the last day of re-

demption, when not acknowledged or delivered until the next day: *National Bank of Commerce v. Davies*, 112 Wash. 106, 191 Pac. 879.

§ 188. **Acknowledgment:** *Huber v. Brown*, 57 Wash. 654, 107 Pac. 850.

§ 189. **Recording and Registration:** *Bracka v. Fish*, 23 Wash. 646, 63 Pac. 561; *Rothchild Bros. v. Rollinger*, 32 Wash. 307, 73 Pac. 367; *Barker v. Muehler*, 55 Wash. 411, 104 Pac. 637.

§ 190. **Curative Statutes:** *Spokane Terminal Co. v. Stanford*, 44 Wash. 45, 87 Pac. 37.

§ 191. **Effect as to Liens and Encumbrances on Property in General:** *Kizer v. Caufield*, 17 Wash. 417, 49 Pac. 1064; *Carlson v. Curran*, 42 Wash. 647, 85 Pac. 627, 6 L. R. A. (N. S.) 260; *Bassett v. Spokane*, 98 Wash. 654, 168 Pac. 478; *Tamblin v. Crowley*, 99 Wash. 133, 168 Pac. 982.

§ 192. **Effect of Defects in Assessment:** *Turner v. Ladd*, 42 Wash. 274, 84 Pac. 866.

§ 11312. [9274.] Mining Claims Acquired by County for Taxes, Lease of.

The commissioners of any of the counties of the state of Washington which have acquired, or which may hereafter acquire, mining claims or properties through the nonpayment of taxes may, when they deem it most advantageous for the county, lease, to the highest and best bidder at public auction with or without an option to purchase, said mining claims or properties or any part thereof, instead of selling the same at public sale: Provided, said lease shall require the payment of royalties on all ore or minerals taken from said mineral claims or properties in such amount and upon such terms and conditions as said commissioners shall deem for the best interest of said county. At least thirty days' notice of the time and place where said lands will be offered for lease shall be given by the commissioners by two publications in some weekly newspaper published in the county where such lands are situated. [L. '07, p. 53, § 1.]

§ 11313. [9275.] Terms of Lease—Option to Purchase.

When said commissioners, in their discretion decide to lease said claims or properties as provided in section 11312, they shall enter an order to that effect upon their records and shall fix the duration and terms and conditions of said lease, and in case an option to purchase is given shall fix the purchase price, which shall not be less than the total amount of the taxes, interest and penalties due at the time the property was acquired by the county, and may provide that any royalties paid shall apply and be credited on the purchase price, and said lease or lease and option shall be signed and executed on behalf of said county by said commissioners, or a majority of them. [L. '07, p. 54, § 2.]

§ 11314. [9276.] Sale and Conveyance.

Upon payment of the full purchase price, in cases where an option to purchase is given, a conveyance shall be executed to the purchaser by the chairman of the board of county commissioners. Such conveyance shall refer to the order of the board authorizing such leasing with the option to purchase, and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold; and such conveyance, when executed, shall be conclusive evidence of the regularity and validity of all proceedings hereunder. [L. '07, p. 54, § 3.]

§ 11315. [9277.] Taxes Paid by Mistake—Reimbursement.

If any property owner shall pay taxes on the property of another by mistake of any kind, and the owner of such property fails or refuses, after thirty days' demand, to reimburse such payor before the date on which the delinquency certificates are issued, as provided in this chapter, the payor, or his assignee, may surrender the tax receipt given for such tax payment to the county treasurer and take a certificate of delinquency in lieu thereof, on payment of the accrued interest thereon. [L. '97, p. 193, § 120.]

Cited in 92 Wash. 209, 210.

§ 11316. [9278.] Assignment of Certificates by County.

Certificates of delinquency issued to counties shall be assignable to individuals by the county treasurer on demand and payment of the full amount due thereon, and said assignee shall have the same rights and proceed in the same manner as if said certificate had been originally issued to him. [L. '99, p. 305, § 30.]

§ 11317. [9279.] Assignment by Owner—Assignee's Rights.

Certificates of delinquency shall be assignable in law, and an assignment thereof shall rest in the assignee or his legal representatives all the right and title of the original purchaser. [L. '99, p. 305, § 31.]

CHAPTER XIV.

ASSESSMENT AND COLLECTION OF TAXES IN CITIES OF FIRST CLASS.

§ 11318. [9280.] Assessments in Cities of the First Class.

It shall be the duty of the county assessor in each county in which there is a city of the first class, as soon as the county and state boards of equalization have finally fixed the valuation of the property in such county for state and county taxation in each year, to certify to the city comptroller of each city of the first class in such county a summary of the valuation of all real estate and personal property in such city, or subject to taxation therein, as shown by the assessment-roll of such county, as finally fixed by the said boards, and also a list of all residents of such city liable to pay a poll tax. It shall be the duty of the county assessor in making up his assessment-roll for the county to place the property within the limits of any such city subject to taxation therein in as compact a form as practicable on said roll, so that the city taxes

may be extended in the same manner as state and county taxes are extended, and that portion of said assessment-roll embracing persons and property subject to taxation in such city shall constitute also the assessment-roll of such city of the first class for the levy and collection of the taxes thereof. When by reason of a change in the boundaries of any such city or otherwise, the rate of taxation is required to differ in different districts thereof, the real and personal property in each district shall be properly segregated for that purpose, and such segregation shall duly appear in the summary certified as aforesaid. [L. '93, p.167, § 1.]

See *supra*, §§ 5601, 5621, levy for funding bonds.

Cited in 6 Wash. 251, 259, 373; 8 Wash. 95; 19 Wash. 655; 21 Wash. 101; 50 Wash. 531.

TAXES AND OTHER REVENUE AND APPLICATION THEREOF: See Remington's Digest, Mun. Corp., §§ 536—555.

§ 536. **Charter and Other Statutory Limitations:** *Seattle v. Yesler*, 1 W. T. 571; *Port Townsend v. Sheehan*, 6 Wash. 220, 33 Pac. 427; *State ex rel. Seattle v. Carson*, 6 Wash. 250, 33 Pac. 428; *Germond v. Tacoma*, 6 Wash. 365, 33 Pac. 961; *State ex rel. Seattle v. Abrahams*, 6 Wash. 372, 33 Pac. 964; *Newman v. North Yakima*, 7 Wash. 220, 34 Pac. 921; *Pierce County ex rel. Maloney v. Spike*, 19 Wash. 652, 54 Pac. 41; *McGill v. Hedges*, 62 Wash. 274, 113 Pac. 635; *Owings v. Olympia*, 88 Wash. 289, 152 Pac. 1019; *New Seattle Chamber of Commerce v. Seattle*, 88 Wash. 620, 153 Pac. 351; *State ex rel. McManis v. Superior Court*, 92 Wash. 360, 159 Pac. 383; *Northern Pac. R. Co. v. Snohomish County*, 101 Wash. 186, 172 Pac. 878; *Benn v. Grays Harbor County*, 102 Wash. 620, 173 Pac. 632.

§ 537. **Power and Duty to Tax:** *State ex rel. American etc. Mtg. Co. v. Mutty*, 39 Wash. 624, 82 Pac. 118.

§ 538. **Power to Tax for Special Purpose:** *Farmer Land Co. v. Pierce County*, 1 Wash. 482, 25 Pac. 904; *Wingate v. Ketner*, 8 Wash. 94, 35 Pac. 591.

§ 540. **Persons and Property Taxable:** *State v. Ide*, 35 Wash. 576, 77 Pac. 961, 102 Am. St. Rep. 914, 67 L. R. A. 280.

§ 541. — **Outside City Limits:** *Pacific Sheet Metal Works v. Roeder*, 26 Wash. 183, 66 Pac. 428; *Coolidge v. Pierce County*, 28 Wash. 95, 68 Pac. 391; *Pacific American Fisheries v. Whatcom County*, 69 Wash. 291, 124 Pac. 915.

§ 542. — **Agricultural Lands:** *Ferguson v. Snohomish*, 8 Wash. 668, 36 Pac. 969, 24 L. R. A. 795; *Frace v. Tacoma*, 16 Wash. 69, 47 Pac. 219.

§ 543. **Exemptions from Taxation—Railroad Property:** *Columbia etc. R. Co. v. Chilberg*, 6 Wash. 612, 34 Pac. 163.

§ 544. **Levying of Taxes:** *Wingate v. Ketner*, 8 Wash. 94, 35 Pac. 591; *State ex rel. American etc. Mtg. Co. v. Mutty*, 39 Wash. 624, 82 Pac. 118.

§ 545. **Assessment of Taxes—In General:** *Seymour v. Tacoma*, 6 Wash. 427, 33 Pac. 1059; *Childs v. Anacortes*, 5 Wash. 452, 32 Pac. 217.

§ 546. — **Mode of Assessment:** *Port Townsend v. Sheehan*, 6 Wash. 220, 33 Pac. 427; *State ex rel. Seattle v. Abrahams*, 6 Wash. 372, 33 Pac. 964.

§ 547. — **Valuation and Description:** *Heilig v. City Council of Puyallup*, 7 Wash. 29, 34 Pac. 164; *Seymour v. Tacoma*, 6 Wash. 427, 33 Pac. 1059.

§ 548. **Lien of Taxes:** *Keene v. Seattle*, 31 Wash. 202, 71 Pac. 769.

§ 549. **Refunding or Recovery of Tax Paid:** *Phelps v. Tacoma*, 15 Wash. 367, 46 Pac. 400; *State ex rel. American Sav. Union v. Whittlesey*, 17 Wash. 447, 50 Pac. 119; *Gove v. Tacoma*, 34 Wash. 434, 76 Pac. 73.

§ 550. **Collection and Enforcement of Taxes:** *State ex rel. Seattle v. Carson*, 6 Wash. 250, 33 Pac. 428; *State ex rel. Olmstead v. Mudgett*, 21 Wash. 99, 57 Pac. 351; *Howe v. Barto*, 12 Wash. 627, 41 Pac. 908; *Port Townsend v. Eisenbeis*, 28 Wash. 533, 68 Pac. 1045.

§ 551. **Time to Sue and Limitations:** *Port Townsend v. Eisenbeis*, 28 Wash. 533, 68 Pac. 1045; *Port Townsend v. Trumbull*, 40 Wash. 386, 82 Pac. 715.

§ 553. **Sale of Land for Nonpayment of Tax:** *Gove v. Tacoma*, 34 Wash. 434, 76 Pac. 73.

§ 554. **Redemption from Tax Sale:** *Bidwell v. Tacoma*, 26 Wash. 518, 67 Pac. 259; *Meagher v. Sprague*, 31 Wash. 549, 72 Pac. 108.

§ 555. **Tax Titles:** *Ford v. Durie*, 8 Wash. 87, 35 Pac. 595, 1082; *Howe v. Barto*, 12 Wash. 627, 41 Pac. 908; *Phelps v. Tacoma*, 15 Wash. 367, 46 Pac. 400; *Gove v. Tacoma*, 26 Wash. 474, 67 Pac. 261.

§ 11319. [9281.] Rate of Taxes.

The city council of each city of the first class shall within thirty days after receiving the certificate of the county assessor, as provided in the preceding section, by ordinance in each year fix the rate of taxes to be levied and levy the taxes upon all taxable property, both real and personal, in such city, or subject to taxation therein, as shown by said roll, needed to raise sufficient revenue to carry on the different departments of the municipal government thereof for one year, which year shall be the fiscal year (to be designated in the ordinance) fixed by the charter of such city, and shall be either the current or ensuing fiscal year as required by such charter, or, in the absence of a charter requirement, as such ordinance shall provide. Any other general taxes authorized by the charter of such city to be levied with the annual tax levy may be included in such levy. [L. '93, p. 167, § 2.]

Cited in 8 Wash. 96, 97; 14 Wash. 379; 62 Wash. 276; 88 Wash. 621; 106 Wash. 99.

§ 11320. [9282.] Clerk to Certify.

The city council shall cause the city clerk to certify a copy of the ordinance making such levy to the county auditor, or other officer authorized to extend the state and county taxes, who shall extend the same upon the general assessment-roll of such county in the same manner and at the same time that he extends the levy for state and county purposes, and shall in turn certify the same to the county treasurer, who shall proceed to collect such taxes in the same manner and at the same time and with the same power to enforce payment as in the case of state and county taxes. All city taxes may be extended in one column without distinguishing the various funds or purposes for which the same are levied, and a copy of the ordinance making the levy for such city shall be recorded in full in each book making up the assessment-roll. [L. '93, p. 168, § 3.]

§ 11321. [9283.] County Treasurer, Duties of.

The county treasurer of each county in which there is or shall be a city of the first class is hereby constituted ex-officio collector of city taxes of such city, and before entering upon the duties of his office he shall execute in favor of such city and file with the clerk thereof a good and sufficient bond, the penal sum to be fixed by the city council, such bond to be approved by the mayor of such city or other authority thereof by whom the bond of the city treasurer is required to be approved. All special assessments and special taxation for local improvements assessed on property benefited shall be collected by the city treasurer except as otherwise provided by this chapter. [L. '93, p. 168, § 4; L. '95, p. 407, § 1.]

Cited in 14 Wash. 483; 50 Wash. 533; 113 Wash. 218.

§ 11322. [9284.] County Treasurer to Turn Over Collections Monthly.

All such city taxes collected shall belong to such city and the county treasurer shall, on or before the tenth day of each month, turn over all such taxes so collected for the previous month to the city treasurer,

and take a receipt therefor in duplicate, and at the same-time he shall certify to the city comptroller the amounts of taxes so collected and turn over and deliver with such certificate one copy of the receipt of the city treasurer therefor. The county treasurer shall also render to the city comptroller, on or before the tenth day of each month, between the first day of January and the first day of May a statement of all taxes collected for such city during the preceding month. [L. '93, p.169, § 5; L. '95, p.408, § 2; L. '05, p.298, § 1.]

§ 11323. [9285.] Delinquent Taxes.

All taxes of any such city assessed under the provisions of this chapter becoming delinquent shall be collected and enforced by the same officers and in the same manner as delinquent county and state taxes now are or may hereafter be collected and enforced. Any real property sold to the county for state, county and city taxes shall be held by the county for the common benefit of the county and city in proportion to the equitable interest of each in the taxes, costs and expenses for which the same were sold. All provisions of law relating to discount on state and county taxes and penalties, interest and costs thereon and the times when the same become due, payable or delinquent shall apply to city taxes levied under authority of this chapter. [L. '93, p.169, § 6.]

§ 11324. [9286.] Other Taxes.

All delinquent taxes now or hereafter owing to any city not levied as provided in this chapter shall be collected and enforced in the manner provided by the charters of the respective cities by which the same were levied. [L. '93, p.169, § 7.]

See notes to § 8951, supra.

§ 11325. [9287.] Roll of County to be Assessment-roll of City.

The assessment-roll of the county made as herein provided shall be deemed and held to be also the assessment-roll of any city of the first class therein, and in cases where the charter of any such city requires delinquent assessments for local improvements, or any special taxes or assessments whatever to be entered on the annual tax-roll of such city, the city treasurer shall from time to time certify the same, together with the accumulated penalties and interest thereon, to the county treasurer, who shall enter the same on the general county assessment-roll against the property so taxed or assessed in a separate column head, "Delinquent local assessments, city of —," in the manner directed by such charter, and the same shall be a part of the tax due on such property and with interest shall be collected as other taxes, separate account being kept thereof, and if not paid within the time fixed for the payment of other taxes, shall be collected as other taxes are collected, together with the additional charges, penalties and interests authorized to be charged and collected on other delinquent taxes; and all other proceedings shall be taken thereon as if the same were originally a part of the general tax assessed against such property. [L. '93, p.169, § 8.]

Cited in 31 Wash. 204.

§ 11326. [9288.] This Chapter to Supersede Conflicting Provisions.

This chapter shall supersede all conflicting provisions of law or charters of cities of the first class relating to the assessment, equalization and collection of general taxes for municipal purposes: Provided, that in counties having cities of the first class the city council thereof shall select a committee of three members of such council to act with the board of county commissioners as a board of equalization, and shall have the powers and perform the duties concerning the equalization of assessments in their respective cities that are given to the county boards of equalization by the general revenue laws of the state. The city council may provide for the compensation of the members of the committee for the time they are actually engaged as members of the board of equalization. [L. '93, p. 170, § 9; L. '95, p. 408, § 3.]

Cited in 8 Wash. 96, 97; 14 Wash. 483; 19 Wash. 655; 21 Wash. 102; 50 Wash. 533; 106 Wash. 98.

§ 11327. [9289.] City to Pay Clerk Hire.

Each city shall pay to the county one thousand dollars per annum for clerk hire. [L. '93, p. 170, § 10; L. '95, p. 409, § 4.]

Cited in 6 Wash. 258; 14 Wash. 483.

CHAPTER XV.**ASSESSMENT OF TAXES IN CITIES OF THE SECOND, THIRD AND FOURTH CLASSES, ETC.****§ 11328. [9290.] Assessments in Certain Cities.**

All taxes levied for municipal purposes by municipal corporations of the second, third and fourth class, and by cities of equal population but existing under special legislative charters, may be assessed and collected in the manner hereinafter provided, whenever such municipal corporation shall by ordinance provide that assessments and collection of taxes shall be so made. A copy of which said ordinance shall be delivered to the county assessor and to the county treasurer: Provided, that nothing in this chapter shall be held to prevent any such municipal corporation from providing by ordinance a general system for the assessment and collection of its taxes: Provided, that penalties and interest on delinquent taxes shall not exceed those provided by the general revenue laws. [L. '93, p. 171, § 1; L. '95, p. 339, § 1; L. '07, p. 55, § 1.]

See supra, §§ 5601, 5621, levy for funding bonds.

See supra, § 5637, levy for current expenses.

See supra, § 5639, levy for indebtedness.

Cited in 6 Wash. 220, 221; 7 Wash. 30.

§ 11329. [9291.] County Assessor Ex-officio City Assessor.

For the purpose of assessment of all property in said municipal corporations the county assessor of the county wherein such corporation is situated shall be ex-officio assessor. [L. '93, p. 171, § 2.]

§ 11330. [9292.] County Treasurer Ex-officio Collector.

For the purpose of collection of all taxes levied by said municipal corporations for municipal purposes, the county treasurer of the county wherein such corporation is situated shall be ex-officio tax collector. [L. '93, p. 171, § 3. Cf. 1 H. C., § 680.]

§ 11331. [9293.] City and County Assessment Made at Same Time.

The assessment of said property shall be made by said assessor at the same time and in the same manner, and the property shall be listed and described in its proper order as to numerical arrangement on the rolls as the assessment is made and entered of the other property in the county. Said property shall be listed in its proper numerical order on the general assessment-rolls of the county, and the assessor shall note on such roll[s] the fact that such property is situated in the town of — (stating the name), and said assessment-roll shall be prepared with a column wherein to enter the amount of tax levied by such municipal corporation. [L. '93, p. 171, § 4.]

§ 11332. [9294.] Equalization.

Said assessment shall be equalized by the county and state board of equalization in the same manner as other assessments are equalized: Provided, that in counties having a city of the second class situated therein, the city council of such city shall select a committee of three members of such council to act with the board of county commissioners as a board of equalization with respect to all property situated within such city, and the board of equalization so constituted shall have the powers and perform the duties concerning the equalization of assessments within such city of the second class that are given to the county boards of equalization by the general revenue laws of the state. The city council may provide for the compensation of the members of the committee for the time they are actually engaged as members of the board of equalization. [L. '07, p. 56, § 2. Cf. 1 H. C., §§ 646, 681; rep. L. '93, p. 172, § 5.]

See notes to § 11222.

§ 11333. [9295.] County Auditor's Duties.

As soon as the county auditor has completed the changes ordered by the state board of equalization, he shall forthwith notify the clerk of said corporation of the total assessed valuation of the property situated in such corporation as equalized by said state board, and the proper officers of such corporation shall forthwith proceed to fix and determine their levy for municipal purposes for such year, which levy shall immediately be certified to said county auditor, under the hand and seal of the clerk of said corporation. The county auditor shall thereupon extend said tax upon the property shown by such assessment-roll to be within such corporation as fixed by such levy, at the same time and in the same manner as he extends the general county and state taxes, and deliver said roll to the county treasurer. [L. '93, p. 172, § 6; L. '05, p. 269, § 1.]

See notes to § 11222.

§ 11334. [9296.] County Treasurer—Duties as Collector.

The county treasurer, upon the receipt of such roll, shall proceed to collect and receipt for the municipal taxes thereon extended at the same time and in the same manner as he proceeds in the collection of the other taxes on such roll. [L. '93, p. 172, § 7.]

§ 11335. [9297.] Returns of.

The county treasurer shall make a certified return at the end of each month to the treasurer of such corporation of the amounts collected by him on account of such taxes from the time he shall commence the collection thereof until the whole tax collected shall be paid over. [L. '93, p. 172, § 8.]

§ 11336. [9298.] Taxes, When Delinquent.

All municipal taxes when so levied by any such municipal corporations, either upon personal or real property, shall become due and collectible, and shall be declared delinquent at the same time and in the same manner as state and county taxes. [L. '93, p. 172, § 9; L. '95, p. 339, § 2.]

§ 11337. [9299.] Delinquencies, How Collected.

All delinquent municipal taxes of any such municipal corporations when assessed in the manner provided in this chapter shall be subject to the same penalty and be collected in the same manner, and in the same action and by the same officers, as the state and county taxes levied against the said property. [L. '93, p. 172, § 10; L. '95, p. 339, § 3.]

Teachers. See Education, §§ 4966—4994.

TITLE LXXIX.

TELEGRAPH AND TELEPHONE COMPANIES.

Taxation of telephone companies: See *supra*, §§ 11188, 11189.

Taxation of telegraph companies: See *supra*, §§ 11190—11200.

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§ 11338. [9300.] Right of Eminent Domain Extended to.

The right of eminent domain is hereby extended to all telegraph and telephone corporations and companies organized or doing business in this state. [L. '90, p. 292, § 1; 1 H. C., § 1547.]

Cited in 77 Wash. 33; 86 Wash. 319.

Constitutional and statutory provisions:
See *State ex rel. Spokane & B. C. Tel. Co. v. Spokane*, 24 Wash. 53, 63 Pac. 1116.

This section did not impliedly repeal

section 8966, subdivision 7, authorizing cities of the first class to grant telephone franchises in streets: *State ex rel. Tacoma v. Sunset Tel. & Tel. Co.*, 86 Wash. 309, 150 Pac. 427.

§ 11339. [9301.] Right to Enter Lands for Survey, etc.

Every corporation incorporated under the laws of this state, or any state or territory of the United States, for the purpose of constructing, operating, or maintaining any telegraph or telephone in this state, shall have the right to enter upon any land between the termini of its proposed lines of telegraph or telephone for the purpose of examining, locating, and surveying the line of such telegraph or telephone, doing no unnecessary damage thereby. [L. '88, p. 65, § 1; 1 H. C., § 1548.]

§ 11340. [9302.] May Use Right of Way of Post Road.

Every railroad operated in this state, and carrying freight and passengers for hire, or doing business in this state, is and shall be designated a “post road,” and the corporation or company owning the same shall allow telegraph and telephone companies to construct and maintain

telegraph and telephone lines on and along the right of way of such railroad. [L. '90, p. 292, § 3; 1 H. C., § 1545.]

See, also, *infra*, § 11352, and notes.

Cited in 77 Wash. 34.

Right and measure of compensation to owner of fee when telegraph or

telephone line is erected along railroad right of way or highway. 8 A. L. R. 1293.

§ 11341. [9303.] Discrimination in Rates, Facilities, etc., Prohibited.

No railroad corporation or company organized or doing business in this state shall allow any telegraph or telephone company, or any individual, any facilities, privileges, or rates for transportation of men or material, or for repairing their lines, not allowed to all telegraph and telephone companies and individuals. [L. '90, p. 292, § 4; 1 H. C., § 1546.]

See *supra*, §§ 10371—10381 et seq., regulation of rates.

Franchises and Privileges: See Remington's Digest, Tel. & Tel., § 2; State ex rel. Spokane & B. C. Tel. Co. v. Spokane, 24 Wash. 53, 63 Pac. 1116; State ex rel. Tacoma v. Sunset Telephone & Telegraph Co., 86 Wash. 309, 150 Pac. 427, L. R. A. 1917F, 1178; State ex rel. Ellertsen v. Home Tel. & Tel. Co., 102 Wash. 196, 172 Pac. 899.

Regulation and Operation—Power of Public Service Commission: See Remington's Digest, Tel. & Tel., § 5; State ex rel. Public Service Commission v. Skagit River Telephone & Telegraph Co., 85 Wash. 29, 147 Pac. 885; State ex rel. Public Service Commission v. Skagit River Telephone & Telegraph Co., 89 Wash. 625, 155 Pac. 144.

See, also, as to powers of commission in war time: State ex rel. Seattle and Tacoma v. Public Serv. Com., 110 Wash. 130, 188 Pac. 7.

Duty to Furnish Service and Facilities: See Remington's Digest, Tel. & Tel., § 6; State ex rel. Bauer v. Sunset Tel. & Tel. Co., 30 Wash. 676, 71 Pac. 198; State ex rel. Public Service Commission v. Skagit

River Telephone & Telegraph Co., 85 Wash. 29, 147 Pac. 885.

Charges: See Remington's Digest, Tel. & Tel., § 7; State ex rel. MacMahon v. Independent Tel. Co., 59 Wash. 156, 109 Pac. 366, 31 L. R. A. (N. S.) 329; State ex rel. Webster v. Superior Court, 67 Wash. 37, 120 Pac. 861, Ann. Cas. 1913D, 78, L. R. A. 1915C, 287; State ex rel. Ellertsen v. Home Tel. & Tel. Co., 102 Wash. 196, 172 Pac. 899.

See, also, recovery of overcharges: State ex rel. Home Tel. & Tel. Co. v. Superior Court, 110 Wash. 396, 188 Pac. 404.

Duty of telephone company to supply connections and facilities without discrimination. 11 Ann. Cas. 138; 15 Ann. Cas. 1215; Ann. Cas. 1912C, 135; Ann. Cas. 1916C, 779.

Regulations or provisions upon requiring physical connection of telephone lines as discrimination. 16 A. L. R. 352; 11 A. L. R. 1204.

Discrimination by telegraph or telephone company in respect to extension of credit. 12 A. L. R. 964.

§ 11342. [9304.] Extent to Which Premises may be Appropriated.

Such telegraph or telephone company may appropriate so much land as may be actually necessary for its line of telegraph or telephone, with the right to enter upon lands immediately adjacent thereto, for the purpose of constructing, maintaining, and operating its line and making all necessary repair. Such telegraph or telephone company may also, for the purpose aforesaid, enter upon and appropriate such portion of the right of way of any railroad company as may be necessary for the construction, maintenance, and operation, of its telegraph or telephone line: Provided, however, that such appropriation shall not obstruct such railroad or the travel thereupon, nor interfere with the operation of such railroad. [L. '88, p. 66, § 2; 1 H. C., § 1549.]

Cited in 77 Wash. 34.

This section does not limit the telephone company to the use of railroad

rights of way: State ex rel. DeSoucy v. Superior Court, 77 Wash. 31, 137 Pac. 311.

§ 11343. [9305.] Duty of, as to Transmission of Messages.

Said corporations and companies shall receive, exchange, and transmit each other's messages without delay or discrimination, and all telephone companies shall receive and transmit messages for any person. [L. '90, p. 292, § 2; 1 H. C., § 1550.]

See supra, §§ 2660, 2662, 2663, interference with, divulging, or opening message.

Duties and Liabilities: See Remington's Digest, Tel. & Tel., §§ 8—14; State ex rel. Bauer v. Sunset Tel. & Tel. Co., 30 Wash. 676, 71 Pac. 198; Norman v. Western Union Tel. Co., 31 Wash. 577, 72 Pac. 474; Martin v. Sunset Tel. & Tel. Co., 18 Wash. 260, 51 Pac. 376; Henry v. Western Union Tel. Co., 73 Wash. 260, 131 Pac. 812, 46 L. R. A. (N. S.) 412; Deighton v. Hover, 58 Wash. 12, 107 Pac. 853, 137 Am. St. Rep. 1035, 21 Ann. Cas. 860; Bentley v. Western Union Tel. Co., 98 Wash. 431, 167 Pac. 1127; Id., 102 Wash. 433, 172 Pac. 1172; Corcoran v. Postal Tel. Co., 80 Wash. 570, 142 Pac. 29, L. R. A. 1915B, 522.

Under U. S. Comp. Stats., 1913, §§ 8581, 8583, authorizing telegraph companies to

classify messages into repeated and un-repeated messages and to charge different rates for the same, a company would not be liable for a mistake in an un-repeated message, stipulated on the back of the telegraph blank to have been sent without liability for mistake, if the charges were just and reasonable, regardless of state laws: Rasher-Kingman-Herrin Co. v. Postal Telegraph-Cable Co., 108 Wash. 543, 185 Pac. 947, 1119.

Duty of telegraph company to notify sender of message in case of inability to transmit or deliver promptly 14 Ann. Cas. 371; Ann. Cas. 1917C, 545; 17 A. L. R. 109; 67 L. B. A. 153; 16 L. B. A. (N. S.) 870.

§ 11344. [9306.] Order of Sending Messages—Penalty.

It shall be the duty of any telegraph company doing business in the state to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit, by the person or persons whose dispatch is postponed out of its order: Provided, that communication to and from public officers on official business may have precedence over all other communications: And provided also, that intelligence of general and public interest may be transmitted for publication out of its order. [L. '66, p. 77, § 20; Cd. '81, § 2361; 1 H. C., § 1551.]

§ 11345. [9307.] Communications in Writing—What Deemed to be.

Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing. [L. '66, p. 74, § 11; Cd. '81, § 2352; 1 H. C., § 1552.]

§ 11346. [9308.] Notice by Telegraph Deemed Actual Notice.

Whenever any notice, information, or intelligence, written or otherwise, is required to be given, the same may be given by telegraph: Provided, that the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice. [L. '66, p. 74, § 12; Cd. '81, § 2353; 1 H. C., § 1553.]

§ 11347. [9309.] Instrument in Writing Transmitted by Telegraph—Effect.

Any power of attorney, or other instrument in writing, duly proved or acknowledged, and certified so as to be entitled to record, may, together with the certificate of its proof for acknowledgment, be sent by telegraph, and telegraphic copy, or duplicate thereof, shall, prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect, as the original. [L. '66, p. 74, § 13, Cd. '81, § 2354; 1 H. C., § 1554.]

§ 11348. [9310.] Checks, etc., Made or Drawn by Telegraph—Effect of.

Checks, duebills, promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser, or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer [drawee], indorse [indorsee], acceptor, holder, or bearer thereof, and shall be entitled to the same days of grace, as if duly made or drawn and delivered in writing; but it shall not be lawful for any person other than the person or drawer thereof to cause any such instrument to be sent by telegraph, so as to charge any person thereby, except as hereinafter in the next section otherwise provided. Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same to prove the existence and execution of the original writing from which the telegraph copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent. [L. '66, p. 74, § 14; Cd. '81, § 2355; 1 H. C., § 1555.]

§ 11349. [9311.] Telegraphic Copies as Evidence.

Except as hereinbefore otherwise provided, any instrument in writing, duly certified, under his hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the personal knowledge of such officer, may together with such certificate, be sent by telegraph, and the telegraphic copy thereof shall, prima facie, only have the same force, effect, and validity, in all respects whatsoever, as the original, and the burden of proof shall rest with the party denying the genuineness or due execution of the original. [L. '66, p. 75, § 15; Cd. '81, § 2356; 1 H. C., § 1556.]

See supra, § 254, service of papers by telegraph.

See supra, § 1260, certified copies as evidence.

§ 11350. [9312.] Seal and Revenue Stamp, How Described.

Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the

letters "L. S." or by the word "seal"; and whenever any document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy by the word "stamp," without any other or further description thereof. [L. '66, p. 76, § 18; Cd. '81, § 2359; 1 H. C., § 1559.]

§ 11351. [9313.] Term "Copy" or "Duplicate" Construed.

The term "telegraphic copy," or "telegraphic duplicate," whenever used in this title, shall be construed to mean any copy of a message made or prepared for delivery at the office to which said message may have been sent by telegraph. [L. '66, p. 77, § 21; Cd. '81, § 2362; 1 H. C., § 1560.]

§ 11352. [9314.] May Use Highways for Poles, Wires, etc.

Any telegraph or telephone corporation or company, or the lessees thereof, doing business in this state, shall have the right to construct and maintain all necessary lines of telegraph or telephone for public traffic along and upon any public road, street, or highway, along or across the right of way of any railroad corporation, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixture of their lines, in such manner and at such points as not to incommode the public use of the railroad or highway, or interrupt the navigation of the waters: Provided, that when the right of way of such corporation has not been acquired by or through any grant or donation from the United States, or this state, or any county, city, or town therein, then the right to construct and maintain such lines shall be secured only by the exercise of the right of eminent domain, as provided by law: Provided further, that where the right of way, as herein contemplated, is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telegraph or telephone lines can be erected thereon. [L. '90, p. 292, § 5; 1 H. C., § 1561.]

See supra, §§ 6431—6433, franchise for use of country roads.

Cited in 24 Wash. 57; 86 Wash. 319; 87 Wash. 585, 587, 588; 102 Wash. 198.

A telephone franchise ordinance is subject to referendum, notwithstanding this action: State ex rel. Walker v. Superior Court, 87 Wash. 582, 152 Pac. 11.

This section does not prevent a city from granting a telephone franchise controlling the rates that may be charged: State ex rel. Ellertsen v. Home Tel. & Tel. Co., 102 Wash. 196, 172 Pac. 899.

§ 11353. [9315.] Liability for Negligently Injuring or Destroying Fixtures of.

Any person who injures or destroys, through want of proper care, any necessary or useful fixtures of any telegraph or telephone corporation or company is liable to the corporation or company for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures, or destroys the subaqueous cable of a telegraph or telephone corporation or company subjects its owners to the damages hereinbefore specified. [L. '90, p. 293, § 6; 1 H. C., § 1562.]

§ 11354. [9316.] Liability for Willful Injury to Property of.

Any person who willfully and maliciously does any injury to any telegraph or telephone property mentioned in the preceding section is liable

to the corporation or company for five times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction. [L. '90, p. 293, § 7; 1 H. C., § 1563.]

See supra, § 2656, malicious injury to lines and appliances.

§ 11355. [9317.] Penalty for Failure or Refusal to Transmit Messages.

In case of the refusal or neglect of any telegraph or telephone corporation to comply with the provisions of section 11343, the penalty for the same shall be a fine of not more than five hundred nor less than one hundred dollars for each offense. [L. '90, p. 293, § 8; 1 H. C., § 1564.]

As to repeal of this section, see § 2304, and note.

Present law, see supra, § 2662.

Liability of telegraph company for refusal to accept message for transmission. *Ann. Cas.* 1916D, 467.

Right to refuse telegraph message because of its character. 17 L. B. A. (N. S.) 836.

§ 11356. [9318.] Liability Where Railroad Company Refuses Certain Rights.

In case of the refusal or neglect of any railroad company or corporation to comply with the provisions of section 11340, said company or corporation shall be liable for damages in the sum of not less than one thousand dollars nor more than five thousand dollars for each offense, and one hundred dollars per day during the continuance thereof. [L. '90, p. 293, § 9; 1 H. C., § 1565.]

§ 11357. [9319.] Notice as to Location of Cable must be Given.

No telegraph or telephone corporation or company can recover damages for the breaking or injury of any subaqueous telegraph cable, unless such corporation or company has previously erected on either bank of the waters under which the cable is placed a monument indicating the place where the cable lies, and publishes for one month, in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable. [L. '90, p. 293, § 10; 1 H. C., § 1566.]

§ 11358. [9320.] Employees are Exempt from Militia and Jury Duty.

All operators, clerks, and persons in the employ of any telegraph company, whilst employed in the offices of said company, or along the route of its telegraph line, shall be exempt from militia duty and from serving on juries, and from any fine or penalty for the neglect thereof. [L. '66, p. 74, § 10; Cd. '81, § 2351; 1 H. C., § 1567.]

Tide Lands. See "Lands of the State."

Filling in by private contract, see "Navigation," § 9603.

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TOWNSHIPS.

TITLE LXXX.

TOWNSHIPS.

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CHAPTER I.

THE VOTE ON ORGANIZATION.

§ 11360. [9322.] Petition for Township Organization.

When at least thirty days before a general election one hundred or more qualified electors of any county in this state present a petition in writing, signed by them, to the board of county commissioners of their county, asking that the question of township organization in said county be submitted to a vote of the people at the next general election, it shall be the duty of said commissioners to submit the question of adopting township organization in said county to the vote of the electors thereof at the first general election held after such petition is presented to said board of commissioners. [L. '95, p. 472, § 1.]

See Const., Art. XI, § 4, township organizations to be provided for.

Cited in 49 Wash. 72; 97 Wash. 146; 100 Wash. 268; 106 Wash. 519.

Townships are liable for the defective condition of their highways: Orrock v. South Moran Township, 97 Wash. 144, 165 Pac. 1096; Nipges v. Mountain View Township, 100 Wash. 268, 170 Pac. 560.

Const., Art. II, § 4, requires that a township election carry by a vote of a majority of the qualified voters voting at the general election: State ex rel. Milliken v. Board of Commrs., 49 Wash. 70, 94 Pac. 897.

§ 11361. [9323.] County Commissioners to Examine Petition and Order Election.

Upon such petition being filed with the clerk of the board of county commissioners, it shall be the duty of the said board to examine said petition, and if they find that it has been signed by the requisite number of electors of said county, said board shall, by an order to be entered on their minutes, direct that the question of adopting township organization shall be submitted to the voters of said county at the next general election; said order shall direct that after the names of the candidates for office to be voted for at the next general election, and after any question directed by the state to be voted on, there shall be printed on the ballots the words, "For township organization," and "Against township organization." [L. '95, p. 473, § 2.]

§ 11362. [9324.] Ballots—Requisites of.

The clerk of the board of county commissioners shall, on preparing the ballots for the general election to be held next after the said petition has been so presented, have the words "For township organization," and "Against township organization" printed on said ballots as above directed. At said election the votes on said question shall be returned by the judges and clerks of election, and shall be canvassed along with the rest of the election returns. [L. '95, p. 473, § 3.]

CHAPTER II.**DIVISION OF COUNTIES INTO TOWNSHIPS.****§ 11363. [9325.] Division, How Made.**

Should the majority of the votes cast on the question of township organization be in favor thereof, it shall be the duty of the board of county commissioners, at their next meeting after such election, or as soon thereafter as practicable, to divide all the surveyed portion of the county, outside of incorporated cities, towns and villages, into organized townships. In making such division the county commissioners shall see that each organized township has at least twenty-five inhabitants who are legal voters, and they shall pay due regard to the lines of congressional townships, but wherever it shall be most convenient for the inhabitants of two or more congressional townships, or portions thereof adjoining each other, that they should be formed into one organized township, the county commissioners may organize a township out of such adjacent congressional townships or portions thereof, and a congressional township may be divided among two or more organized townships. Thereafter, when any township has been surveyed, it shall either be organized into a township or be attached to another township or townships. When any unsurveyed tract of land in a county has a sufficient number of inhabitants who are legal voters to be organized into a township, the board of county commissioners may organize such tract into a township, or any unsurveyed tract may be annexed to an adjoining township. Said board shall fix and determine the boundaries of each of such townships, and shall name the same; and said board shall make a full report of all their proceedings in relation

to laying out said towns, and shall have said report entered in full upon their minutes. [L. '95, p. 473, § 4.]

Cited in 49 Wash. 73.

§ 11364. [9326.] Dividing Towns.

When rivers or lakes or mountains so divide a township as to make it inconvenient to do town business, the said commissioners may dispose of any fraction so formed by annexing the same to an adjoining township in the same county, if it shall seem to them proper, whenever petitioned to do so by not less than two-thirds of the legal voters residing in such fraction, and the fact that such petition is signed by two-thirds of such voters may be proved by the affidavit of any legal voter residing in such fraction and having knowledge of the fact; and any township having two or more villages, each containing two hundred or more inhabitants, may petition the county commissioners for a division. When the county commissioners are so petitioned, they may, if they think the interest of such town will be subserved thereby, proceed to divide such townships in such manner as will best suit the inhabitants thereof: Provided, however, that at least twenty days' notice shall first be given by the county commissioners to the chairman of the board of supervisors of each township affected by the change before action is taken thereon: Provided further, that nothing herein contained shall be construed to release any property in or belonging to that part of any township so detached from any tax levied or assessed prior to such division being made: Provided, that the part of any town annexed to any other town, and any village or city separated from any town under the provisions of this title shall not be released from or in any way discharged from the payment of any bonded or other indebtedness that may exist against the town from which separation has been made. [L. '95, p. 474, § 5.]

§ 11365. [9327.] Towns to be Named.

Towns thus formed shall be named by the county commissioners in accordance with the expressed wish of a majority of the legal voters resident therein; but if they fail to so designate the name, the county commissioners may select a name. [L. '95, p. 475, § 6.]

§ 11366. [9328.] Abstract of Report to State Auditor.

Each county auditor shall, within thirty days after such town is organized, transmit by mail to the auditor of the state an abstract of such report, giving the bounds of each town, and the name designated: and said county auditor shall record, in a book for that purpose, a full description of each town. [L. '95, p. 475, § 7.]

§ 11367. [9329.] Towns Having the Same Name—Proceedings.

If the auditor of state, on comparing the abstract of the reports from the several counties, finds that any two or more townships have the same name, he shall transmit to the auditor of the proper county the name of the town to be altered; and the board of commissioners shall, at their next meeting thereafter, adopt for such town some name different

from those heretofore named, so that no two towns organized under this chapter shall have the same name; and when such name is adopted, the auditor of the county shall inform the state auditor as before directed. [L. '95, p. 475, § 8.]

§ 11368. [9330.] Boundaries to Remain as First Established.

The limits and boundary lines of every organized township shall remain as first established, until otherwise provided by the board of county commissioners under the authority of law. [L. '95, p. 476, § 9.]

CHAPTER III.

TOWN MEETINGS, POWERS OF TOWNS.

§ 11369. [9331.] First Town Meeting, When and Where Held.

At the time of dividing any county into organized townships the county commissioners shall make out notices designating a suitable place for holding the first town meeting in each town, which shall be holden on the first Tuesday in March following the election at which township organization was adopted by vote of the county, and the auditor shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in each township not less than ten days before the day set for such town meeting. [L. '95, p. 476, § 10.]

§ 11370. [9332.] Powers of Towns.

Each town is a body corporate, and has capacity—

First. To sue and be sued.

Second. To purchase, or receive by gift or otherwise, and hold lands within its own limits and for the use of its inhabitants, subject to the power of the legislature.

Third. To make contracts, purchase, and hold such personal property as may be necessary for the exercise of its corporate or administrative powers, and convey and dispose of the same.

Fourth. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interest of its own inhabitants. [L. '95, p. 476, § 11; L. '09, p. 74, § 1.]

§ 11371. [9333.] Powers Restricted.

No town shall possess or exercise any corporate powers except such as are enumerated in this title or are especially given by law or necessary to the exercise of the powers so enumerated or granted. [L. '95, p. 476, § 12.]

§ 11372. [9334.] Proceedings to be in Name of.

All acts or proceedings by or against a town in its corporate capacity shall be in the name of such town; but every conveyance of land within the limits of such town, made in any manner for the use or benefit of its inhabitants, has the same effect as if made to the town by name. [L. '95, p. 476, § 13.]

§ 11373. [9335.] By-laws, When in Effect.

No by-law made by any town shall take effect before the same is published by posting up copies thereof in three of the most public places in the town; and such by-laws duly made and so published are binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent town meeting. [L. '95, p. 477, § 14.]

§ 11374. [9336.] Who are Electors.

Every person possessing the qualifications of an elector in any town is entitled to vote at any town meeting, and is eligible to any town office. [L. '95, p. 477, § 15.]

§ 11375. [9337.] Annual Meetings.

The citizens of the several towns of this state qualified to vote at town meetings shall annually assemble and hold town meetings in their several towns on the first Tuesday in March, at such place in each town as the electors thereof, at their annual town meetings, from time to time appoint, and notice of the time and place of holding such meeting shall be given by the town clerk by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting. Every town meeting shall be held at the same place as the last preceding town meeting was held, unless the place of meeting be changed by vote of the town meeting or of the board of supervisors: Provided, that before any change of place of holding town meetings is made by the board of supervisors, notice of such contemplated change may be given by any member of the town board to the town clerk, who shall, in his regularly printed or written notices as provided herein, incorporate the notice of the change of place at which said town meeting is to be held. [L. '95, p. 477, § 16.]

§ 11376. [9338.] Officers to be Elected.

There shall be elected at the annual town meeting in each town, one supervisor, one town clerk, one treasurer and one assessor, and there shall be elected at the annual town meeting in the even numbered years one justice of the peace and one constable to hold office for the term of two years and until their successors are elected and qualified: Provided, that at the annual town meeting in each town in 1916 there shall be elected three supervisors, one to hold office for the term of one year, one to hold office for the term of two years and one to hold office for the term of three years and the board of supervisors shall have power to employ and appoint and to fix the salary of an overseer of highways for said town or an overseer of highways for each road district in said town. Said overseer or overseers may or may not be a resident of said town or road district. [L. '15, p. 268, § 1. Cf. L. '95, p. 477, § 17; L. '09, p. 74, § 2.]

§ 11377. [9339.] Supervisors, Fence Viewers.

The supervisors elected in every town are, by virtue of their office, fence viewers of such town. [L. '95, p. 478, § 18.]

This section was expressly amended by the act of 1909, when the next section was clearly intended.

§ 11378. [9339½.*] Powers of Electors.

The electors of each town have power, at their annual town meeting:

First. To determine the number of poundmasters, and location of pounds.

Second. To select such town officers as are required to be chosen.

Third. To direct the institution or defense of actions in all controversies where such town is interested.

Fourth. To direct such sums to be raised in such town for prosecuting or defending such actions as they may deem necessary.

Fifth. To make all rules and regulations for ascertaining the sufficiency of fences in such town and for impounding animals.

Sixth. To determine the time and manner in which certain domestic animals may be permitted to go at large.

Seventh. To impose such penalties on persons offending against any rules or regulations established by said town, except such as relate to the keeping and maintaining of fences, as they think proper, not exceeding ten dollars for each offense, unless herein otherwise provided.

Eighth. To apply such penalties, when collected, in such manner as they may deem most conducive to the interests of the town.

Ninth. To vote to raise such sums of money for the repairs and construction of roads and bridges as they deem necessary, and to determine the amount thereof to be assessed by the supervisors as labor tax and the amount thereof to be assessed and collected as other town taxes. Also to vote such sums of money for other necessary town charges as they deem expedient: Provided, that they may, at their annual town meeting, direct such an amount of the poll and road tax of the town to be expended on highways in an adjoining town as they deem conducive to the interests of the town, which labor and tax shall be expended under the direction of the supervisors of the town furnishing the same.

Tenth. To vote by ballot to establish a town library for the use of the people thereof and when established to make all by-laws, rules and regulations necessary for the management thereof; to raise a sum not exceeding three hundred dollars (\$300) in any one year for the providing of books, furnishing a place to keep such library, and pay a librarian for his services; said sum to be expended on the direction of the board.

Eleventh. To instruct by vote the board to purchase grounds for a town cemetery; to limit the price to be paid therefor, to raise a tax for payment thereon and to establish rules for the care and management of the same.

Twelfth. To authorize the licensing of dogs.

Thirteenth. To make such by-laws and regulations as may be deemed conducive to the peace, good order and welfare of the town; to license, tax, regulate and control hawkers, peddlers, auctioneers, shows, theatricals, circuses, lawful games, merry-go-rounds, ferris-wheels, or other amusement devices or places of amusement.

Fourteenth. To acquire land containing pits of gravel or quarries of stone needed by the town for road construction, proceeding in the same manner that land is condemned for road and other public purposes.

Fifteenth. To vote to levy a tax in such an amount as in their judgment is necessary or advisable, but not to exceed four mills upon all tax-

able property in such township, for the purpose of creating a fund to be known as river improvement fund. [L. '19, p. 261, § 1; L. '11, p. 113, § 1; L. '13, p. 441, § 1. Cf. L. '95, p. 478, § 19; L. '09, p. 75, § 3.]

The act of 1909 supersedes § 19 of the act of 1895, although purporting to amend § 18.

Cited in 58 Wash. 495.

§ 11379. [9340.] Special Meetings.

Special town meetings may be held for the purpose of transacting any lawful business whenever the supervisors, town clerk and justice of the peace, or any two of them, together with at least twelve other freeholders of the town, file in the office of the town clerk a written statement that a special meeting is necessary for the interest of the town. [L. '95, p. 479, § 20.]

§ 11380. [9341.] Special Meeting—Notice.

Every town clerk with whom such statement is filed, as required in the preceding section, shall record the same and immediately cause notice to be posted up in five of the most public places in the town, giving at least ten days' notice of such special meeting; and if there is a newspaper published in said town he shall cause a copy of said notice to be published therein at least three days before the time appointed for such meeting. [L. '95, p. 480, § 21.]

§ 11381. [9342.] Contents of Notice.

Every notice given for a special town meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. [L. '95, p. 480, § 22.]

§ 11382. [9343.] Meeting, How Organized.

The electors present at any time between 9 and 10 o'clock in the forenoon of the day of the annual town meeting, or special town meeting, shall be called to order by the town clerk, if there is one present; in case there is none present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such meeting. The town clerk last before elected shall be clerk of the meeting, and keep full minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by the meeting. If the town clerk is absent, then such person as is elected for that purpose shall act as clerk of the meeting. [L. '95, p. 480, § 23.]

§ 11383. [9344.] Business, How Transacted.

At the opening of every town meeting, the moderator shall state the business to be transacted and the order in which it shall be entertained, and no proposition to vote a tax shall be acted on out of the order of business as stated by the moderator; and no proposition to reconsider any vote shall be entertained at any town meeting, unless such

proposition to reconsider is made within one hour from the time such vote was passed or the motion for such reconsideration is sustained by a number of voters equal to a majority of all the names entered upon the poll list at such election up to the time such motion is made; and all questions upon motions made at town meetings shall be determined by a majority of the electors voting, and the moderator shall ascertain and declare the result of the votes on each question. [L. '95, p. 480, § 24.]

§ 11384. [9345.] Challenges, How Regulated.

If any person offering to vote at any election or upon any question arising at such town meeting is challenged as unqualified, the judges of the town meeting shall proceed thereupon in like manner as the judges at the general election are required to proceed, adapting the oath to the circumstances of the town meeting. [L. '95, p. 481, § 25.]

§ 11385. [9346.] Proclamation.

Before the electors proceed to elect any town officer, proclamation shall be made of the opening of the polls by the moderator, and proclamation shall, in like manner, be made of the adjournment, and the opening and closing of the polls, until the election is ended. [L. '95, p. 481, § 26.]

§ 11386. [9347.] Officers, How Elected.

The supervisors, treasurer, town clerk, assessor, justices of the peace and constables in each township shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas or nays or by a division, as the electors determine. [L. '95, p. 481, § 27.]

§ 11387. [9348.] Names to be on One Ballot.

When the electors vote by ballot, all the officers voted for shall be named in one ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for and the offices to which such persons are intended to be chosen. [L. '95, p. 481, § 28.]

§ 11388. [9349.] Manner of Voting.

When the election is by ballot, the elector voting shall fold his ballot so that the names voted for cannot be seen, and hand the ballot to one of the judges of election, who shall, without opening the same or permitting the same to be opened or examined, deposit the ballot in the ballot-box, and shall announce the name of the elector in an audible voice. The clerk of the town meeting shall then enter on a poll-list to be kept by him the name of the person voting. [L. '95, p. 481, § 29.]

§ 11389. [9350.] Manner of Conducting Canvass.

At the close of every election by ballot the judges shall proceed publicly to canvass the votes, which canvass, when commenced, shall continue without adjournment or interruption until the same is com-

pleted. The canvass shall be conducted by taking a ballot at a time from the ballot-box and counting until the number of ballots is equal to the number of names on the poll-list; and if there are any left in the box they shall be immediately destroyed; and the person having the greatest number of votes for any office shall be declared duly elected: Provided, that if two or more persons have an equal and the highest number of votes for any office the judges of election shall at once publicly, by lot, determine who of such persons shall be declared elected. If, on opening the ballots, two or more ballots are found to be so folded that it is apparent that the same person voted them, the board shall destroy such votes immediately. [L. '95, p. 482, § 30.]

§ 11390. [9351.] Result to be Read.

The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of its proceedings, to be kept by him as before required, which shall be publicly read by him to the meeting; and such reading shall be deemed notice of the result of the election to every person whose name is entered on the poll-list as a voter. [L. '95, p. 482, § 31.]

§ 11391. [9352.] Minutes to be Filed.

The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting and by the judges, shall be filed in the office of the town clerk within two days after such town meeting. [L. '95, p. 482, § 32.]

§ 11392. [9353.] Persons Elected to be Notified.

The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office whose name is not entered on the poll-list as a voter notice of his election. [L. '95, p. 482, § 33.]

CHAPTER IV.

QUALIFICATIONS OF TOWN OFFICERS.

§ 11393. [9354.] Officers to Take Oath.

Every person elected or appointed to the office of supervisor, town clerk, assessor, treasurer or constable, within two weeks after he is notified of his election or appointment, shall take and subscribe before the town clerk or justice of the peace an oath to support the Constitution of the United States and of the state of Washington, and faithfully to discharge the duties of his office (naming the same) to the best of his ability. Such oath shall be administered without fee and certified by the officer before whom it was taken with the date of taking the same. [L. '95, p. 483, § 34.]

§ 11394. [9355.] Certificate of Oath to be Filed.

The person taking such oath shall immediately, and before entering upon the duties of his office, file the certificate of such oath in the office of the town clerk. [L. '95, p. 483, § 35.]

§ 11395. [9356.] Effect of not Filing Oath or Bond.

If any person elected or appointed to any town office, of whom an oath or bond is required, neglects to file the same within the time prescribed by law, such neglect shall be deemed a refusal to serve in such office. [L. '95, p. 483, § 36.]

§ 11396. [9357.] Overseers and Poundmasters to File Acceptance of Office.

Every person elected or appointed to the office of overseer of highways or poundmaster, before he enters on the duties of his office, and within two weeks after he is notified of his election or appointment, shall file in the office of the town clerk a notice signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal to serve. Every person elected or appointed to the office of overseer of highways, before he enters upon the duties of his office, and within two weeks after he is notified of his election or appointment, shall take and subscribe before the town clerk or justice of the peace an oath to support the Constitution of the United States and of the state of Washington, and faithfully to discharge the duties of his office to the best of his ability. Such overseer of highways shall also execute and deliver to the supervisors of the town and their successors in office a bond, with one or more sureties, to be approved by the board of supervisors, in an amount determined by said board, conditioned for the faithful discharge of his duties. [L. '13, p. 443, § 2. Cf. L. '95, p. 483, § 37.]

§ 11397. [9358.] Treasurer to Give Bond.

Every person appointed or elected to the office of treasurer, before he enters upon the duties of his office, shall execute and deliver to the supervisors of the town and their successors in office, a bond, with one or more sureties, to be approved by the board of supervisors, in double the probable amount of money to be in his hands at any one time, which amount shall be determined by said board, conditioned for the faithful execution of his duties as such treasurer. [L. '13, p. 444, § 3. Cf. L. '95, p. 483, § 38.]

§ 11398. [9359.] Bond to be Filed.

The said chairman shall, within six days thereafter, file such bond, with said approval indorsed thereon, in the office of the county clerk, who shall record the same in a book provided for that purpose. [L. '95, p. 484, § 39.]

§ 11399. [9360.] Constable, Oath and Bond.

Every person chosen to the office of constable, before he enters upon the duties of his office, and within two weeks after he is notified of his election or appointment, shall take and subscribe the oath of office prescribed by law and execute a bond to the state of Washington in such penal sum as the supervisors direct, with one or more sufficient sureties, to be approved by the chairman of said board or the town clerk, con-

ditioned for the faithful discharge of his duties. The chairman of said board or the town clerk shall, if such bond is approved, indorse his approval thereon and cause such bond to be filed with the town clerk for the benefit of any person aggrieved by acts or omission of said constable; and any person so aggrieved, or the town, may maintain an action on said bond against said constable and sureties. [L. '95, p. 484, § 40.]

§ 11400. [9361.] Justices, Oath and Bond.

Every person elected or appointed to the office of justice of the peace shall, within two weeks after receiving notice thereof, take and subscribe before any other officer duly authorized to administer oaths, an oath to support the Constitution of the United States and of the state of Washington and faithfully and impartially to discharge the duties of his office according to the best of his ability. He shall also execute a bond to the state of Washington, with two or more sufficient sureties, to be approved by the chairman, in the penal sum of not less than five hundred dollars nor more than one thousand dollars, conditioned for the faithful discharge of his official duties. Said chairman shall indorse thereon his approval of the sureties named in such bond, and such justice shall immediately file the same, together with his oath of office, duly certified, with the clerk of the county of the proper county for the benefit of any person aggrieved by the acts of said justice; and any person aggrieved may maintain an action on said bond in his own name against said justice and his sureties. [L. '95, p. 484, § 41.]

§ 11401. [9362.] Effect of Neglect to Give Bond.

If any person elected or appointed to the office of treasurer, constable or overseer of highways does not give such bond and take such oath as is required above, within the time limited for that purpose, such neglect shall be deemed a refusal to serve. [L. '13, p. 444, § 4. Cf. L. '95, p. 485, § 42.]

§ 11402. [9363.] Penalty for Entering on Duties Before Taking Oath.

If any town officer who is required by law to take the oath of office enters upon the duties of his office before taking such oath, he forfeits to such town the sum of fifty dollars, and the same to go to the county poor fund. [L. '95, p. 485, § 43.]

§ 11403. [9364.] Officers not to be Interested in Contracts.

No town officer shall become a party to or interested, directly or indirectly, in any contract made by the board of which he may be a member: Provided, this shall not be construed to prohibit the employment of a team or teams belonging to a township officer when a required number of teams, owned in the township, are not otherwise obtainable, or the employment of a township officer as a day laborer. Every contract or payment voted for or made contrary to the provisions of this title is void and any violation of this section hereafter committed shall be a malfeasance in office, which will subject the officer so offending to be removed from office. [L. '13, p. 444, § 5. Cf. L. '95, p. 485, § 44.]

§ 11404. [9365.] Terms of Office.

Town officers, except justices of the peace and constables, hold their offices for one year and until others are elected or appointed in their places and are qualified. The justices of the peace and constables shall hold their offices for two years and until others are chosen and qualified. [L. '95, p. 485, § 45.]

CHAPTER V.**FILLING VACANCIES.****§ 11405. [9366.] Vacancies—How Filled.**

The board of county commissioners of any county may, for sufficient cause shown to them, accept the resignation of any town officer in any township in their county, and whenever they accept any such resignation, they shall forthwith appoint another elector of the town to the office, and shall give notice thereof in writing to the person so appointed and to the town clerk; or in the case of a vacancy in the office of town clerk or overseer of highways, to the chairman of the board of supervisors of the town. [L. '13, p. 444, § 6. Cf. L. '95, p. 485, § 46.]

§ 11406. [9367.] Failure to Elect.

Whenever any town fails to elect the proper number of town officers or when any person elected to a town office fails to qualify or whenever any vacancy happens in any town office from death, resignation, removal from town or other cause, the town clerk, or in case there is no town clerk, then the chairman or one of the town supervisors shall give notice in writing of such vacancy or vacancies to the board of county commissioners of the county in which such town is situated and said board, upon such notice being given them, or if they know of any vacancy in any town office in any township in their county, shall forthwith fill the vacancy or vacancies by appointment by warrant, signed by the chairman of the board, and countersigned by the clerk of said board, and shall give notice in writing personally or by mail to the town clerk or the chairman of the board of supervisors, and also to the person so appointed. All persons appointed to office under this title shall qualify as herein provided, and shall hold their offices until the next annual town meeting and until their successors are elected or appointed and qualified in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected to such offices. [L. '95, p. 486, § 47.]

CHAPTER VI.**DUTIES OF TOWN SUPERVISORS.****§ 11407. [9368.] Powers and Duties.**

The supervisors shall have charge of such affairs of the town as are not by law committed to other town officers; and they shall have power to designate the justice of the peace, or other suitable person, as police judge in and for such township; and such police judge shall have the same powers and duties as are conferred by law upon the police judge

in cities of the fourth class; and they shall have power to draw orders on the town treasurer for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the town, and for all moneys raised by the town to be disbursed for any other purpose. They shall have charge of all highways and bridges in their respective townships, and the care and supervision thereof; and shall have power to divide their respective townships into road districts and to appoint one resident elector of each road district as overseer thereof for the first year of township organization; to establish new highways and bridges and to vacate or alter all highways and bridges wholly within the township in the same manner as now provided by law for the establishing of new highways and bridges and the vacation or alteration of the same by the county commissioners in the case of county roads and bridges, except that the duties therein provided to be performed by the county commissioners shall be performed by the township board of supervisors except that all notices therein provided shall be given by the county engineer and all meetings therein provided shall be held at his office in the county courthouse and all records and files maintained therein, and all expenses for the condemnation and procuring of right of ways therein provided shall be met and paid by the township treasurer on order of the board of township supervisors, and it shall be unlawful for any township funds to be expended upon any roads not established in accordance with said law: Provided, nothing in this act contained shall be construed as prohibiting any county from or denying to any county the power to build, repair, alter and maintain, at the county's expense, such highways and bridges as the county generally is interested in or such as may be of so large cost that a single township could not undertake the construction of, or such as are located in sparsely settled townships as are unable to construct the same. Whenever the electors of any township shall have voted to establish a river improvement fund, such fund shall be expended by the board of township supervisors to acquire by condemnation or otherwise, any land bordering upon or in the vicinity of the banks of any river or stream to be improved, which in their judgment it is advisable to acquire, to strengthen and preserve the banks of any river or stream and prevent overflow thereof, and confine such river or stream within its proper channel, or to straighten the channel by dredging or construction of a new channel; to construct any levee, embankment, channel or other construction at such point where such land is acquired, as in their judgment they may deem necessary or advisable; to protect and render more secure the banks of any river by constructing therein stone or masonry work, contrivance or piling or such other construction as in their judgment is best adapted to accomplish such purpose; to remove log jams or obstructions that may be or hereafter form in such river, and to do any other act to prevent the formation of any obstruction in such river or stream; to employ such persons as they deem necessary and fix their compensation to patrol such rivers and streams and remove such log jams or obstructions now existing or which may hereafter form, and for the purpose of preventing the formation thereof, and who shall perform such

other duties as are contemplated by this act and directed by said board of township supervisors. And such board of supervisors shall be authorized, in the expenditure of such funds for any of the purposes aforesaid, to co-operate with the board of county commissioners of the county acting under the provisions of sections 9625 to 9628 in making new improvements and to enter into contracts with the county to pay a certain portion of the cost of any improvements made by the county. [L. '19, p. 263, § 2; L. '11, p. 113, § 1. Cf. L. '95, p. 486, § 48; L. '09, p. 76, § 4.]

Cited in 67 Wash. 237; 106 Wash. 515, 519.

Rem. & Bal. Code, section 9368, enlarging the powers of township officers over highways in the township and providing that nothing in the act shall affect the rights of counties over roads in which the county generally is interested, etc.,

did not affect the jurisdiction of the county over a county road wholly within the township sought to be established by the county commissioners, under sections 6447, 6458—6460, supra; the township not being forced to aid in its construction: Strunz v. Spokane County, 67 Wash. 235, 121 Pac. 75.

§ 11408. [9369.] Quorum.

Any two of the supervisors constitute a quorum for the performance of any duties required by law of the town supervisors, except when otherwise provided. [L. '95, p. 486, § 49.]

§ 11409. [9370.] To be Board of Health.

The town supervisors shall constitute a board of health, and within their respective towns shall have and exercise all the powers necessary for the preservation of the public health and for the prevention and suppression of public nuisances. [L. '95, p. 487, § 50.]

§ 11410. [9371.] Shall Bring Action on Official Bonds.

The supervisors shall, in the name of their town, prosecute, for the benefit of the town, all actions upon bonds given to them or their predecessors in office; and shall also sue for and collect all penalties and forfeitures, in respect to which no other provision is made, incurred by any officer or inhabitant of the town; and they shall have power, in like manner, to prosecute for any trespass committed on any public inclosure or property belonging to the town, and shall pay all moneys collected under this section to the town treasurer. [L. '95, p. 487, § 51.]

§ 11411. [9372.] To Audit Accounts Against Towns.

The supervisors constitute a town board for the purpose of auditing all accounts payable by said town; and if from any cause there are not three supervisors present to constitute said board, the chairman, and, in his absence, either of the other supervisors, may notify the justice of the peace of the town as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the town board. [L. '95, p. 487, § 52.]

CHAPTER VII.

DUTIES OF TOWN CLERK.

§ 11412. [9373.] Town Clerk, Duties—Deputy.

The town clerk shall be clerk of the town board, and shall keep a true record of all their proceedings in his office. He shall have the custody of the record books and papers of the town, when no other provision is made by law, and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office. The town board may, in case of necessity, appoint a deputy town clerk. Before any deputy town clerk shall enter upon the duties of his office he shall take and subscribe the oath required by law, which oath shall be filed in the office of the county clerk. In the month of March, each year, after the annual town meeting, the town clerk of each town shall make to the county auditor a return of all taxes and sums of money voted at said town meeting to be raised, except such taxes as may be assessed by the supervisors as labor tax, designating the separate amounts to be raised for each purpose; and it shall be the duty of the county auditor to levy such amounts on the tax-rolls of that year against the assessed property of such town as hereinafter provided. [L. '95, p. 487, § 53.]

§ 11413. [9373-1.] Duty of Clerk as to Supplies.

It shall be the duty of each township clerk to report to the county auditor on or before the first day of March in each year the amount and the kind of printing supplies, blank books, etc., other than those furnished by the county assessor, needed by the township for the ensuing year. [L. '11, p. 117, § 2.]

§ 11414. [9373-2.] Supplies Furnished by County.

The county auditor upon receiving the estimates of the various townships shall procure from the lowest bidder the supplies, and turn said supplies over to the township ordering the same at actual cost. [L. '11, p. 117, § 3.]

§ 11415. [9374.] Proceedings to be Recorded.

He shall record, in the book of records of his town, minutes of the proceedings of every town meeting, and he shall enter therein every order or direction, and all rules and regulations of any such town meeting; and shall also file and preserve all accounts audited by the town board, or allowed at a town meeting, and enter a statement thereof in such book of records. [L. '95, p. 488, § 54.]

§ 11416. [9375.] Clerks may Take Acknowledgments, etc.

The town clerks of the several towns in this state are hereby authorized to administer all oaths, and take all acknowledgments of instruments, authorized or required by this title. [L. '95, p. 488, § 55.]

§ 11417. [9376.] Oath and Bond of.

Every person elected or appointed to the office of town clerk in any of the towns of this state shall, before he enters upon the duties of his office, and within the time prescribed by law for filing his oath of office, execute a bond with two or more sufficient sureties, to be approved by the town supervisors, in such penal sum as the supervisors direct, conditioned for the faithful discharge of his duties. Said bond so approved shall be filed and recorded in the office of the clerk of the superior court, for the benefit of any person aggrieved by the acts or omissions of said town clerk; and any person so aggrieved, or the town, may maintain an action on said bond against said town clerk and sureties. [L. '95, p. 488, § 56.]

§ 11418. [9377.] Name of Constable to be Sent to Clerk of Court.

Every town clerk, immediately after the qualification of any constable elected or appointed in his town, shall transmit to the clerk of the superior court of the county the name of such constable. [L. '95, p. 488, § 57.]

§ 11419. [9378.] Name of Justice to be Sent to Clerk of Court.

Each town clerk shall, immediately after the election of any justice of the peace in his town, transmit a written notice thereof to the clerk of the superior court of said county, stating therein the name of the person elected, and the term for which he is elected; and if elected to fill a vacancy, he shall state in said notice who was the last incumbent of the office. [L. '95, p. 489, § 58.]

§ 11420. [9379.] Penalty for Neglect to Return.

If any town clerk willfully neglects to make such return, such omission is hereby declared a misdemeanor, and, on conviction thereof, the person so offending shall be adjudged to pay a fine not exceeding ten dollars. [L. '95, p. 489, § 59.]

§ 11421. [9380.] By-laws to be Posted.

The town clerk shall post in three of the most public places in his town, copies of all by-laws made by such town, and shall make an entry in the town records of the time when, and the place where, such by-laws were posted. [L. '95, p. 489, § 60.]

CHAPTER VIII.

CLAIMS AGAINST TOWNS.

§ 11422. [9381.] Itemized Before Allowance.

Before any account, claim, or demand against any town of this state, for any property or services for which such town shall be liable, shall be audited or allowed by the board of officers authorized by law to audit and allow the same, the person in whose favor such account, claim, or demand shall be, or his agent, shall reduce the same to writing in items,

and shall verify the same to the effect that such account, claim, or demand is just and true, that the money therein charged was actually paid for the purposes therein stated, that the property therein charged was actually delivered or used for the purposes therein stated, and was of the value therein charged, and that the services therein charged were actually rendered, and of the value therein charged; or, in case such services were official for which fees are prescribed by law, then that the fees or amounts charged therefor are such as are allowed by law, and that no part of such account, claim, or demand has been paid: Provided, that when the books of the town clerk show the official attendance of a town officer, his claim for per diem for that service need not be verified. [L. '95, p. 489, § 61.]

§ 11423. [9382.] Verification of.

The verification required by the preceding section may be made before any officer authorized by law to administer oaths, or before any member of the board to which the account, claim or demand shall be presented to be audited; and every member of any such board is hereby authorized to administer the proper oath in such cases; and every person who shall willfully or knowingly swear falsely on any such cases, shall be deemed guilty of willful perjury, and be punished accordingly: Provided, that in any case any such account, claim, or demand shall be made or presented by any administrator or executor on behalf of the estate of a deceased person, he shall not be required to verify the same, but may prove the same otherwise to the satisfaction of the board. [L. '95, p. 490, § 62.]

§ 11424. [9383.] Allowance of.

Whenever any account, claim, or demand against any town shall have been verified in the manner prescribed in this title, the board of officers to whom the same shall be presented may receive and consider the same, and may allow or disallow the same in whole or in part as to such board or officers shall appear just or lawful, saving to such claimants the right of appeal. [L. '95, p. 490, § 63.]

§ 11425. [9384.] Penalties for Allowing Claims not Verified.

Any member of such board who shall audit and allow any accounts, claim or demand required by this title to be itemized and verified, without the same having been first duly itemized and verified, shall be deemed guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [L. '95, p. 490, § 64.]

§ 11426. [9385.] Town Board to Meet, When.

The town board shall meet annually on the Tuesday next preceding the annual town meeting to be held in said town, and at such other times as they deem necessary and expedient, for the purpose of auditing and settling all charges against said town, and they shall state on each account the amount allowed by them; but no allowance shall be made for

any account which does not specially state each item of the same, and the nature thereof; and all unpaid accounts of town officers for services rendered since the last annual meeting of said board shall be presented to the town board at their annual meeting on the Tuesday next preceding the annual town meeting, to be audited as aforesaid. [L. '95, p. 490, § 65.]

§ 11427. [9386.] Shall Audit Accounts of Officers.

The said board shall also, at their annual meeting in each year, examine and audit the accounts of the town treasurer for all moneys received and disbursed by him as such officer; and they shall audit the accounts of all other town officers who are authorized by law to receive or disburse any money of the town by virtue of their office. [L. '95, p. 491, § 66.]

§ 11428. [9387.] Board shall Draw Up Report.

Such board shall draw up a report, stating in detail the items of account audited and allowed since the last annual meeting, the nature of each account and the name of the person to whom such account was allowed, the total amount audited and allowed to each township officer in payment for his services since their last annual meeting, including a statement of all the fiscal concerns of the town. As a part thereof said board shall make an estimate of the sum necessary for the current expenses thereof, and other incidental expenses for the ensuing year. [L. '95, p. 491, § 67.]

§ 11429. [9388.] Report to be Read at Town Meeting.

Such report shall be produced and publicly read by the town clerk at the next ensuing town meeting; and the whole or any portion of such report may be referred, by the order of the meeting, to a committee whose duty it shall be to examine the same and report thereon to such meeting. [L. '95, p. 491, § 68.]

§ 11430. [9389.] Treasurer shall Pay Audited Accounts.

The amount of any account audited and allowed by the town board, and the amount of any account voted to be allowed at any town meeting shall be paid by the town treasurer on the order of said board, signed by the chairman and countersigned by the clerk; and all orders issued to any person by the town board for any sums due from such town shall be received in payment of town taxes of said town. [L. '95, p. 491, § 69.]

CHAPTER IX.

DUTIES OF TOWN TREASURER.

§ 11431. [9390.] Duties of.

The town treasurer shall receive and take charge of all moneys belonging to the town or which are by law required to be paid into the town treasury, and shall pay over and account for the same upon the order of such town, or the officers thereof duly authorized in that behalf,

made pursuant to law, and shall perform all such duties as may be required of him by law. [L. '95, p. 492, § 70.]

§ 11432. [9391.] Shall Keep True Accounts and Deliver Books to Successor.

Every town treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the town for that purpose, and exhibit such account, together with his vouchers, to the town board at its annual meeting for adjustment; and he shall deliver all books and property belonging to his office, the balance of all moneys in his hands as such treasurer, to his successor in office, on demand, after such successor has qualified according to law. [L. '95, p. 492, § 71.]

§ 11433. [9392.] Shall Draw Money from County Treasurer—Fees.

The town treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his town, and on receipt of such moneys shall deliver proper vouchers therefor. Each town treasurer shall be allowed and entitled to retain, as his official compensation one per centum of all moneys received by him from the county treasurer, and one per centum of all moneys paid out in the redemption of warrants: Provided, however, that the compensation of said treasurer shall in no case exceed the sum of one hundred dollars in any one year. [L. '13, p. 445, § 7. Cf. L. '95, p. 492, § 72.]

§ 11434. [9392-1.] Township Depository.

Each township treasurer shall annually within thirty days after taking office, designate some bank of the state as a depository of all public funds held and acquired to be kept by him as such treasurer: Provided, that the bank designated by the township treasurer shall furnish, if required by the board of supervisors, to the township an indemnity bond equal in amount to the official bond of said treasurer, such designation shall be filed in writing as part of the minutes of the township board. [L. '13, p. 446, § 9.]

§ 11435. [9393.] Shall Make Annual Statement.

Each town treasurer, within five days preceding the annual town meeting, shall make out a statement in writing of the moneys by him received into the town treasury from the county treasurer, and from all other officers and persons, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person and the date of receiving the same; also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the town clerk and shall be by such clerk carefully preserved and recorded in the town book of records. [L. '95, p. 493, § 73.]

§ 11436. [9394.] Violation of Four Preceding Sections—Penalty.

Every town treasurer who refuses or neglects to comply with the provisions of the four preceding sections shall forfeit not more than two thousand dollars, to be recovered in any court of competent jurisdiction, the amount to be fixed by the jury trying the cause, or by the court if there is no jury impaneled, and may be recovered by civil action in the name of any person who prosecutes the same, with costs of suit; one-half shall go to the person so prosecuting and the remainder to the town of which such delinquent is or has been treasurer. [L. '95, p. 493, § 74.]

§ 11437. [9395.] Unpaid Orders—Indorsement.

Each and every town treasurer shall keep a suitable book, to be provided at the expense of the town, in which he shall enter the town orders that he cannot pay for want of funds when presented to him for payment, which orders when presented, shall be indorsed by such treasurer by putting upon the back of the same the words "Not paid for want of funds," giving the date of such indorsement, signing the same as town treasurer. [L. '95, p. 493, § 75.]

§ 11438. [9396.] Order of Payment of Orders.

All town orders shall be paid in the order of their issuance out of the first moneys that come into the town treasurer's hands for such purpose. [L. '95, p. 493, § 76.]

CHAPTER X.**DUTIES OF TOWN OFFICERS AT ELECTIONS.****§ 11439. [9397.] Judges and Clerks of—Places of Holding.**

Each township shall constitute at least one election precinct. The township supervisors of each township are the judges of election, and the town clerk of each township shall act as one of the clerks of election in their respective election precinct, and the judges of election shall appoint an additional clerk of election, who shall be of an opposite political party, if practicable, to the town clerk. The election shall be held in such election precinct at the place where the last preceding town meeting was held, except as herein provided; but if in any town a vote is taken to hold it elsewhere the next ensuing election shall be held at the place designated by such vote. When in any township having over four hundred electors, the supervisors divide the same into two or more election precincts, they shall designate the boundaries thereof, and thereafter shall be elected, at the annual town meeting of such township, three judges of election and two clerks of election in each precinct, and the place of holding said election in each precinct shall be designated by said town meeting, or, in default of such designation, shall be appointed by the judges of election thereof, in which case they shall make such designation at least twenty days before election, and give notice thereof by posting proper notices in the public places in the township. In case the supervisors divide the township into precincts, as herein provided, and no town

meeting is thereafter held prior to the election, then the county commissioners shall, twenty-five days before election, appoint the judges and clerks for that election. No more than two judges and one clerk of election, except where town supervisors and town clerks so act, shall belong to the same political party. No person shall be eligible as judge or clerk of election unless he be a qualified voter within the election district in which he sits, nor unless he can read, write and speak the English language understandingly. [L. '95, p. 494, § 77.]

§ 11440. [9398.] Division of Precincts, When.

Whenever any town constituting one election precinct is found by the number of votes there cast at any election to contain more than four hundred voters, it shall be the duty of the supervisors of the town to cause such precinct at least six weeks before the next ensuing general or town election, to be divided into two or more districts, each containing as nearly as may be an equal number of voters. [L. '95, p. 495, § 78.]

CHAPTER XI.

ASSESSMENT OF PROPERTY.

§ 11441. [9399.] Duties of Township Assessor.

Each township assessor elected or appointed under this title shall take an oath and give a bond as now required of county assessors, the amount of said bond to be fixed, and the said bond to be approved, by the board of supervisors; and each township assessor shall, in his town, perform the same duties and exercise the same rights as are now performed and exercised by county assessors in their respective counties under the laws of this state, and shall be subject to the same penalties as county assessors now are. [L. '95, p. 495, § 79; L. '09, p. 77, § 5.]

§ 11442. [9400.] County Assessor to Furnish Assessors' Books and Blanks.

First. The county assessor shall annually provide the necessary assessment-books and blanks at the expense of the county, for and to correspond with each assessment district. He shall make out in the real property assessment-book complete lists of all lands or lots subject to taxation, showing the names of the owners, if to him known, and, if unknown, so stated opposite each tract or lot, the number of acres and the lots and parts of lots or block included in each description of property. The list of real property becoming subject to assessment and taxation every odd-numbered year may be appended to the personal property assessment-book. The assessment-books and blanks shall be delivered to the county assessor on or before the second Saturday of March in each year, and the town assessors shall meet on that day at the office of the county assessor for the purpose of receiving such books and blanks, and for conference with the said county assessor in reference to the performance of their duties and that all township assessors shall perform their duties under the supervision of the county assessor.

Second. The county assessor shall in making up his work for the county board of equalization, add thereto the assessment-rolls of the various townships and the same shall be equalized by the county board of equalization as between townships as other property in such counties is equalized. If it shall be necessary to raise the assessment of a township or townships, the county board of equalization shall serve written notice upon the chairman of the township board of supervisors of its intention so to do and shall also give general notice by publication to the residents of such township or townships at least five days previous to making such assessment. [L. '11, p. 113, § 1. Cf. L. '95, p. 495, § 80; L. '09, p. 77, § 6.]

§ 11443. [9401.] Town Board of Review—Duties.

The board of supervisors of each town shall meet on the second Monday in May at the office of the town clerk for the purpose of reviewing the assessment of property in such town and they shall immediately proceed to examine, ascertain and see that all taxable property in their town or district has been properly placed upon the list and duly valued by the assessor; and in case any property, real or personal, shall have been omitted by inadvertence or otherwise, it shall be the duty of said board to place the same upon the list, with the true value thereof, and proceed to correct the assessment, so that each tract or lot of real property and each article, parcel or class of personal property shall be entered on the assessment list at the true and full value thereof; but the assessment of the property of any person shall not be raised until such person shall have been duly notified of the intention of the board so to do. And on the application of any person considering himself aggrieved they shall review the assessment and correct the same as shall appear to them just. Any two of said officers are authorized to act at such meeting, and they may adjourn from day to day until they shall finish the hearing of all cases presented. All complaints and grievances of individuals, residents of the town or district, in reference to the assessment of any property, shall be heard and decided by the town board: Provided, that the complaints of nonresidents in reference to the assessment of any property, real or personal, and of others in reference to any assessment made after the meeting of the town board of review, shall be heard and determined by the county board of equalization: Provided, further, that any person considering himself aggrieved by a decision of the town board of review may present the matter to the county board of equalization for determination. [L. '95, p. 496, § 81; L. '09, p. 78, § 7.]

§ 11444. [9402.] Notice of Meeting of Board of Review.

The assessor shall cause at least ten days' previous notice of the time and place of the meeting of the town board of review by posting notices in at least three public places in his town or district, but the failure to give such notice or hold such meeting shall not vitiate such assessment, except as to the excess of valuation of tax thereon shown to be unjustly made or levied. It shall be the duty of the assessor to attend the meeting of the town board of review with his assessment-books and papers, and

note all changes and additions made by the board, and correct his work accordingly, and not later than ten days after the meeting of the board of review said assessor shall return the assessment-books of his town, duly verified, along with all the assessment papers in his hands, to the county assessor not later than the fifth day of June. [L. '95, p. 496, § 82; L. '09, p. 79, § 8.]

CHAPTER XII.

TOWN TAXES AND CHARGES.

§ 11445. [9403.] Taxes—When to be Certified.

All taxes shall be levied or voted in specific amounts, and the rates per centum shall be determined from the amount of property, as equalized by the county board of equalization each year, except such general taxes as may be definitely fixed by law. The taxes voted by townships, and not previously returned to the county auditor, and all delinquent poll, road and other taxes to be collected by any town officer, and due and unpaid, shall be certified by the proper authorities to the county auditor on or before the first day of November in each year. There shall be levied annually on each dollar of taxable property in the state [township] (other than such as by law is otherwise taxed), as assessed and entered on the tax lists for the several purposes enumerated, taxes at the rates specified as follows: For township purposes, such sum as may be voted at any legal town meeting, the rate of which shall not exceed, exclusive of such sums as may be voted at the annual town meeting for road and bridge purposes, two mills in any township having a taxable valuation of one hundred thousand dollars or more, and the amount of which shall not exceed one hundred and fifty dollars in any township having a taxable valuation less than one hundred thousand dollars, and the rate of such tax shall not exceed one-half of one per cent in any township. The rate of tax for road and bridge purposes in any township shall not exceed eight mills per dollar: Provided, that nothing in this section shall be construed to prevent the township supervisors or corporate authorities of any town from levying any tax which by any special law they may be authorized to levy. [L. '13, p. 445, § 8. Cf. L. '95, p. 497, § 83.]

§ 11446. [9404.] What are Charges.

The following shall be deemed town charges:—

First: The compensation of town officers for services rendered their respective towns.

Second: Contingent expenses necessarily incurred for the use and benefit of the town.

Third: The moneys authorized to be raised by the vote of the town meeting for any town purpose.

Fourth: Every sum directed by law to be raised for any town purpose; Provided, that no tax for town purposes shall exceed the amount voted to be raised at the annual town meeting, as provided by law. [L. '95, p. 498, § 84.]

§ 11447. [9405.] Money—How Levied.

The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town in the manner prescribed in the title for raising revenue and other money for state and county purposes and expenses. [L. '95, p. 498, § 85.]

§ 11448. [9406.] Limit of Debts and Outlays.

No town has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year without having been authorized by a majority of the voters of such township; and no town shall assess for township purposes more than ten mills on the dollar of taxable property for any one year. [L. '95, p. 498, § 86.]

§ 11449. [9406-1.] County to Set Aside Certain Amounts.

Whenever any county of this state shall have adopted township organization it shall be the duty of the board of county commissioners of such county to set aside from the levy of the current year the following sums, which shall be paid to the township treasurer in the manner provided by law: To each township for current expenses, one hundred dollars; to each township for township roads and bridges, twenty-five per cent of the amount levied upon the property of said township for construction and repair of roads and bridges. [L. '13, p. 446, § 10.]

CHAPTER XIII.**TOWN BONDS.****§ 11450. [9407.] Authorized to Issue Bonds.**

The board of supervisors of the organized townships of this state, or those that may hereafter be organized, are authorized and fully empowered to issue the bonds or orders of their respective towns, with coupons attached, in such amounts and at such periods as they may be directed by two-thirds of all the legal voters present and voting at any legally called town meeting held for that purpose; such bonds or orders to be payable in such amounts and at such times, not exceeding ten years from date, as two-thirds of the legal voters present and voting at such meeting shall determine, with interest thereon not to exceed eight per cent per annum, payable annually; which bonds or orders and coupons shall be signed by the chairman of the board of supervisors and countersigned by the clerk of said town: Provided, that nothing herein contained shall be construed to authorize the issuing of said bonds or orders unless the same shall have been first voted for by ballot by two-thirds of all the legal voters present and voting at any annual town meeting, or special town meeting called for that purpose, notices of which, particularly specifying the object for which such meeting was called, have been posted in at least three public places in said town for not less than ten days previous to the calling of the same: Provided further, that in no case shall the total indebtedness of any town at any time exceed five per centum on the value of the taxable property therein, to be ascertained

by the last assessment for state and county purposes previous to the incurring of such indebtedness. [L. '95, p. 498, § 87.]

§ 11451. [9408.] Conditions as to Bonds and Their Proceeds.

No bonds or orders issued under authority of this title shall be so issued or negotiated for less than par value, nor shall said bonds or orders, or the proceeds thereof, be used or appropriated for any purpose whatever other than that specified in this title. [L. '95, p. 499, § 88.]

§ 11452. [9409.] Taxes for Interest and Sinking Fund.

Said board of supervisors and their successors are hereby authorized, and it is hereby made their duty, on or before the first day of September next after the date of said bonds or orders, and in each and every year thereafter, on or before the first day of September, until the payment of said bonds or orders and interest is fully provided for, to levy and in due form to certify to the auditor of the county in which such town is situated, a tax upon the taxable property of said town equal to the amount of principal and interest maturing next after such levy, and, in the discretion of said board of supervisors, such further sum as it shall deem expedient, not exceeding twenty per cent of such maturing bonds or orders and interest, which taxes shall be payable in money and shall constitute a fund for the payment of said bonds or orders and the interest thereon. [L. '95, p. 499, § 89.]

CHAPTER XIV.

POLL TAX—COLLECTION OF TOWN TAXES.

§ 11453. [9410.] Poll Tax to be a Town Fund.

All poll taxes collected by any road overseer or other town officer shall be by him paid to the town treasurer and be part of the township funds. [L. '95, p. 500, § 90.]

§ 11454. [9411.] Payment of Taxes.

All taxes levied for township purposes shall be payable to and shall be collected by the county treasurer of the county in which such township is situated, and such taxes shall be extended on the county tax-rolls, in columns to be provided for that purpose and properly headed, and shall be payable and shall become delinquent at the same time as county taxes are; and they shall, on nonpayment, be subject to the same penalties and draw the same rate of interest; and the collection of the same shall be enforced at the same time and by the same means as the collection of county taxes: Provided, this section shall not apply to any poll tax paid before it becomes delinquent, or to any road tax which by law may be worked out by the person against whom it is assessed before it becomes delinquent; but such taxes when delinquent shall be returned to the town clerk by the officer who is authorized by law to collect the same, on or before the twenty-fifth day of October of the year in which they become delinquent, and shall on or before the first day of November be returned by the town clerk to the county auditor, and shall

be added to the township tax against the property of the person so taxed—the poll tax and the tax on personal property being added to the personal property tax for the succeeding year, and the tax on real property being added to the real property tax for the succeeding year. [L. '95, p. 500, § 91.]

§ 11455. [9412.] County Treasurer to Account for Moneys, etc.

The county treasurer shall keep an account of the money received for each town, and shall quarterly, after the settlement between the county treasurer and county auditor, pay over any money due a town to its treasurer upon the warrant of the county auditor. [L. '95, p. 500, § 92.]

CHAPTER XV.

FEES OF TOWN OFFICERS.

§ 11456. [9413.] Fees of Officers.

The following town officers are entitled to compensation at the following rates for each day necessarily devoted by them to the service of the town, in the duties of their respective offices. The town assessors shall receive for their services two dollars (\$2) per day, while engaged in their respective duties as such assessors. Each road overseer shall receive for his services such salary as shall be fixed by the board of supervisors, while engaged in his duties as such road overseer. The town clerks and supervisors shall receive for their services one dollar (\$1) per day when attending to business in their town, and one dollar and fifty cents (\$1.50) when attending to business out of town; no supervisor shall receive more than twenty dollars (\$20), for compensation, in any one year: Provided, that the town clerks shall be paid fees for the following, and not a per diem: For filing any paper required by law to be filed in his office ten cents (10c) each; for posting up notices required by law, twenty-five cents (25c) each; for recording any order or any instrument of writing authorized by law, five cents (5c) for each one hundred words; for copying any record or instrument on file in his office, and certifying the same, five cents (5c) for each one hundred words, to be paid for by the person applying for the same: Provided further, that in any town meeting, before the electors commence balloting for officers, they may by resolution reduce or increase the compensation of officers, but no such increase shall exceed one hundred per cent (100%). [L. '15, p. 269, § 2. Cf. L. '95, p. 501, § 93; L. '09, p. 79, § 9.]

§ 11457. [9414.] Poundmaster—Duties—Fees.

The poundmaster shall be allowed the following fees, to wit: For taking into pound and discharging therefrom any horse, ass or mule and all neat cattle, fifty cents each; and for every hog, large or small, sheep or lamb, goat or kid, twenty-five cents each; and fifty cents a day for keeping each head of horses, asses, mules or neat cattle twenty-four hours, and twenty cents for keeping each hog, sheep or goat, for each twenty-four hours. And the poundmaster has a lien on all such animals for the full amount of his legal charges and expenses, and shall be

entitled to the possession of such animals until the same are paid; and if the same are not paid, and said animals removed, within four days after they are so impounded, the said poundmaster shall give notice by posting the same in three of the most public places in said town, or by personal notice in writing, if the owner is known, that said animals (describing them) are impounded and that, unless the same are taken away and fee paid within fifteen days after the date of such notice, he will sell the same at public vendue at the place where the town meetings of said town are usually held; and on the day designated in such notice the said poundmaster shall expose the said animals for sale, and sell the same to the highest bidder in cash, for which service he shall receive two per cent of the purchase money for each animal. Out of the money realized from said sale, the said poundmaster shall deduct all his legal fees and charges, and pay the balance, if any, to the chairman of the town supervisors, at the same time giving to said supervisors an accurate description of the animals sold, and the amount received by him for each animal, and shall take a receipt and duplicate therefor, and file one of them with the town clerk: Provided, that the said supervisors shall, at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to said owner the balance due as received from the said poundmaster; but if said money is not claimed within that time the sum so received shall be retained for the use of said town. [L. '11, p. 113, § 1. Cf. L. '95, p. 501, § 94.]

CHAPTER XVI.

POUNDS AND POUNDMASTERS.

§ 11458. [9415.] Pounds to be Under Care of.

Whenever the electors of any town determine at their annual meeting to erect one or more pounds therein, the same shall be under the care and direction of such poundmasters as are chosen or appointed for that purpose. [L. '95, p. 502, § 95.]

§ 11459. [9416.] Pounds Discontinued.

The electors of any town may, at an annual meeting, discontinue any pounds therein. [L. '95, p. 502, § 96.]

CHAPTER XVII.

ACTIONS BY AND AGAINST TOWNS.

§ 11460. [9417.] How Regulated.

Whenever any controversy or cause of action exists between towns, or between a town and an individual or corporation, such proceedings shall be had either at law or equity, for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment or decree therein shall have the like effect, as in other actions or proceedings of a similar kind between individuals and corporations. [L. '95, p. 502, § 97.]

See supra, § 950 et seq., actions by and against public corporations.

§ 11461. [9418.] In What Name Brought.

In all such actions and proceedings the town shall sue and be sued in its name. [L. '95, p. 503, § 98.]

§ 11462. [9419.] Papers, How Served.

In legal proceedings against a town by name, all papers shall be served on the chairman of the board of supervisors, and, in case of his absence, on the town clerk; and whenever any action or proceeding is commenced, said chairman shall attend to the defense thereof, and lay before the electors of the town, at the first town meeting, a full statement of such proceedings, for their direction in regard to the defense thereof. [L. '95, p. 503, § 99.]

§ 11463. [9420.] Action Before Justice of Peace.

No action in favor of any town shall be brought before any justice of the peace residing in such town. [L. '95, p. 503, § 100.]

§ 11464. [9421.] Action to Recover Penalty by Trespass.

Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the town, if it appears on the trial thereof that the actual amount of injury to such town lands in consequence of such trespass exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage with cost of suit shall be recovered in said action, instead of any penalty for said trespass imposed by the town meeting; and such recovery shall be used as a bar to every other action for the same trespass. [L. '95, p. 503, § 101.]

§ 11465. [9422.] Other Actions, How Regulated.

Whenever by decree or decision, in any action or proceeding brought to settle any controversy in relation to town commons or other lands, the common property of a town, or for the partition thereof, the rights of any town are settled and confirmed, the court in which such proceedings are had may partition such lands according to the right of parties. [L. '95, p. 503, § 102.]

§ 11466. [9423.] Judgments Against Towns, How Collected.

When a judgment is recovered against any town, or against any town officers, in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed or stayed on appeal, shall be paid by the town treasurer, upon demand and the delivery to him of a certified copy of the judgment, if there is sufficient money of such town in his hands not otherwise appropriated. If he fails to do so, he shall be personally liable for the amount, unless the collection thereof is afterward stayed upon appeal. If payment is not made within thirty days after the time fixed by law for the county treasurer to pay over to the town treasurer the money in his hands belonging to such town, levied for the purpose of paying such judgment, next after the rendition of such judgment, execution may be issued on such judgment, but only town property shall be liable thereon. [L. '95, p. 504, § 103.]

§ 11467. [9424.] Tax Levied to Pay Judgment, When.

If judgment for the recovery of money is rendered against any town, and the judgment is not satisfied, or proceedings thereon stayed by appeal or otherwise, before the next annual meeting of said town, a certified copy of the judgment may be presented to said town at said annual meeting. The supervisors of the town shall thereupon cause the amount due on the judgment, with interest from the date of its recovery, to be added to the tax of said town, and the same certified to the county auditor, and collected as other town taxes are collected. [L. '95, p. 504, § 104.]

CHAPTER XVIII.**GUIDE-POSTS.****§ 11468. [9425.] Location of.**

Every township shall, in the manner provided herein, erect and maintain guide-posts on the highways and other ways within the township at such places as are necessary or convenient for the direction of travelers. [L. '95, p. 504, § 105.]

§ 11469. [9426.] Report Guide-posts Erected.

The supervisors shall submit to the electors at every annual meeting a report of all the places at which guide-posts are erected and maintained within the town, and of all places at which, in their opinion, they ought to be erected and maintained. For each neglect or refusal to make such report, they shall severally forfeit the sum of ten dollars. [L. '95, p. 505, § 106.]

§ 11470. [9427.] To Determine Places for—Penalty.

Upon the report of the supervisors, the town shall determine the several places at which guide-posts shall be erected and maintained, which shall be recorded in the town records. A town officer who neglects or refuses to determine such places and to cause a record thereof to be made shall forfeit to the road and bridge fund the sum of five dollars for every month during which it [he] neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guide-posts reported to be necessary or convenient by the supervisors, the town shall be estopped from alleging that such guide-posts were not necessary or convenient. [L. '95, p. 505, § 107.]

§ 11471. [9428.] How Erected and Marked.

At each of the places determined by the town there shall be a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board, and upon such board shall be plainly and legibly painted or otherwise marked the name of the next town or place, and such other town or place of note as the supervisors think proper, to which each of such roads lead, together with the distance or number of miles to the same; and also the figure of a hand with the forefinger thereof pointed towards the towns or places to which said roads lead: Provided, that the inhabitants of any town may, at their annual meeting, agree upon some suitable substitute for such guide-posts. [L. '95, p. 505, § 108.]

§ 11472. [9429.] Penalty for not Maintaining.

Every town officer who neglects or refuses to erect and maintain such guide-posts or some suitable substitute therefor shall forfeit annually the sum of five dollars for every guide-post which he so neglects or refuses to maintain, which sum may be used for and collected by any person before any justice of the peace of the proper county, and the moneys so collected shall be paid into the town treasury for the benefit of the roads and bridges of said town. [L. '95, p. 505, § 109.]

CHAPTER XIX.**POSTING NOTICES.****§ 11473. [9430.] Public Places for.**

At the annual town meeting in each year, the legal voters present at each meeting shall determine and designate three places in the town as public or the most public places of such town, and that all legal notices required to be posted in three public or the most public places of the town shall be posted up at such places at least, and they shall make provision for the erection and maintenance of suitable posts on which to post up notices as aforesaid, in all places so designated, in which there is no sufficient natural convenience for that purpose. [L. '95, p. 506, § 110.]

CHAPTER XX.**BOOKS AND PAPERS OF OUTGOING OFFICERS.****§ 11474. [9431.] Demand for.**

Whenever the term of any supervisor, town clerk, assessor, justice of the peace, constable, road overseer or other town officer expires and another person is appointed or elected to such office, such successor, immediately after he enters upon the duties of his office, shall demand of his predecessor all books and papers under his control and belonging to such office. [L. '95, p. 506, § 111.]

§ 11475. [9432.] Demand in Case of Vacancy.

Whenever either of the officers above named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the person so elected shall make such demand of his predecessors or of any person having charge of such books and papers. [L. '95, p. 506, § 112.]

§ 11476. [9433.] Books to be Delivered to Successor.

Every person so going out of office, whenever thereto required pursuant to the foregoing provisions, shall deliver, upon oath, all records, books, and papers in his possession or in his control belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made. [L. '95, p. 506, § 113.]

§ 11477. [9434.] Demand in Case of Death.

Upon the death of any of the officers enumerated, the successor of such officers shall make such demand, as above provided, of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon like oath, all records, books, papers or moneys in their possession or under their control, belonging to the office held by their testator or intestate. [L. '95, p. 507, § 114.]

CHAPTER XXI.**MISCELLANEOUS PROVISIONS.****§ 11478. [9435.] Construction of Words Used in This Title.**

In this title the words town and township are used with the same meaning, and are used to designate a township organized under this title, unless the contrary appears from the context; and whenever the word oath is used, it shall be understood to mean oath or affirmation. [L. '95, p. 507, § 115; L. '09, p. 80, § 10.]

§ 11479. [9436.] Former Precincts and Road Districts Abolished, etc.

In all townships after they have become fully organized under this title, the election precinct or precincts, and road district or districts theretofore organized by the county commissioners shall be abolished, and election precincts and road districts shall be established as provided in this title; and there shall be no election for road overseers in the December following the general election at which township organization is voted, but the road overseers then holding office shall continue to hold their offices till the township road overseers have been elected or appointed and qualified. After townships have been organized, justices of the peace and constables shall not be elected at general elections, but at town meetings as herein provided. The assessment of property in any town made last before any township has been organized shall remain and continue in force till the next assessment has been made by the township assessor. The county assessor shall not assess any property within the limits of an organized township, and the assessment of property made by the township assessors shall have the same force and effect, when reviewed by the town board of review, as the assessment of property now made by county assessors, and shall be acted on and equalized by the county board of equalization as required by law. [L. '95, p. 507, § 116.]

§ 11480. [9436-1.] Obligations Against Road Districts Under Township Organization.

Whenever any county has heretofore, or shall hereafter, adopt and take upon itself township organization and government under the provisions of any law passed pursuant to the provisions of section 4, Article XI of the Constitution of this state, authorizing such organization and government, and at the time of the adoption of such form of government there shall exist against any road district in such county, previously created and defined by the commissioners of such county, any obligations for debts incurred in the construction or repair of any roads or bridges

in such road district, such change in the government of said county shall not in any way affect such existing obligations of any such road district; but all such obligations shall remain and constitute a valid charge upon and against all of the taxable property included within the territorial limits of such road district as it existed at the time of the adoption of such township organization for the full amount of all of said obligations. For the purposes of this act, the territory which comprised said road district shall thereafter comprise and constitute a road tax district of said county, and said road tax district shall be designated by a like number by which said road district was theretofore known. [L. '11, p. 47, § 1.]

§ 11481. [9436-2.] Road District Tax to be Levied.

There shall be levied annually at the same time the levy for general county taxes is made, and by the officers levying the said county tax, a tax of not more than five mills on the dollar on all taxable property within the territorial limits of every such road district as the same existed at the time of the adoption of such township organization for the payment of and until the full amount of all indebtedness, together with all accrued and accruing interest thereon, existing against any such road district, shall have been paid in full. [L. '11, p. 48, § 2.]

§ 11482. [9436-3.] Tax Collected as Other Taxes.

The tax levied, as provided for in section 11481, shall be extended upon the tax-rolls of the county, and shall be collected by the county treasurer of said county at the same time and in the same manner as other taxes are collected, and said treasurer shall credit to the proper road tax district all sums collected from any such levy, and all sums so collected shall by the treasurer be applied to the payment, in the order of their issue, of the outstanding warrants against the road district for the indebtedness of which said levy was made. [L. '11, p. 48, § 3.]

§ 11483. [9437.] Conveyances of Real Estate.

Whenever any real estate belonging to the town is sold, the conveyances thereof shall be executed by the chairman of the town board in his official capacity and attested by the clerk; and such conveyance, duly witnessed and acknowledged, shall convey to the grantee therein named all of the right, title and estate which the town then has in the real estate conveyed. [L. '09, p. 80, § 11.]

§ 11484. [9438.] Future Acts.

No act that shall hereafter become a law shall be construed as in any manner altering, amending or repealing any of the provisions of this title unless such act expressly so provides. [L. '09, p. 80, § 12.]

Cited in 58 Wash. 498.

TITLE LXXXI.

TOWNSITES.

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§ 11485. [9439.] Application to United States Land Office, etc.

It is the duty of the city or town council of any city or town in this state situate upon public lands of the United States or lands, the legal and equitable title to which is in the United States of America, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes and proceedings, at a regular meeting, to authorize and direct the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affi-

davits, or other instruments requisite to carry into effect the intentions of this act and the intentions of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, including section sixteen of an act of congress entitled "An act to repeal timber culture laws and for other purposes," approved March 3, 1891, and to make proof, when required, of the facts necessary to establish the claims of such inhabitants to the lands so granted by said acts of congress, and file in the proper United States land office a proper application in writing describing the tracts of land on which such city or town is situate, and make proof and payment for such tracts of land in the manner required by law. [L. '09, p. 820, § 1.]

For former laws on this subject, see L. '88, pp. 216—220; Bal. Code, §§ 1304—1314; 1 Hill's Code, §§ 3109—3120, repealed by this act.

"This act" refers to this chapter.

See *supra*, §§ 9311—9318, vacation of townsites and city plats.

Conclusiveness of decision or findings
of the Land Department as to town
sites. L. R. A. 1918D, 621.

Right to change lot lines of occu-
pants after entry under the town
site act. 30 L. R. A. (N. S.) 183.

§ 11486. [9440.] Survey and Plat.

Said council must cause a survey to be made by some competent person, of the lands which the inhabitants of said city or town may be entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes and alleys, public squares, churches, school lots, cemeteries, commons and levees as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each, and every lot or parcel of land and premises claimed by any person, corporations or associations within said city or town site must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor or occupants and claimants, and in case of any disputed claim as to lots, lands, premises or boundaries the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely. [L. '09, p. 821, § 2.]

§ 11487. [9441.] Plat—Scale and Filing—Blocks, Lots, etc.

A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein the city or town is situated, one must be deposited in the proper United States land office, and one with the city or town clerk. These plats shall be considered public records, and each must be accompanied with a copy of the field-notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file a copy of said field-notes in his office. The

said surveyor must number the blocks as divided by the roads, highways and streets opened and generally used, and for which a public necessity exists at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats. Said survey and plat thereof shall conform as near as may be to the existing rights, interests and claims of the occupants thereof, but no lot in the central or business portion of such city or town shall exceed in area four thousand two hundred square feet, and no suburban lot in such city or town shall exceed two acres in area. [L. '09, p. 822, § 3.]

§ 11488. [9442.] Survey—Notice—Bids for, etc.—Franchises Continued.

Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or town-site, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the holders, claimants and occupants thereof; and the council is hereby authorized and directed to receive bids for such surveying, and to let the same by contract to the lowest competent bidder: Provided, that the possessors, owners and claimants of waterworks, electric light, telegraph, telephone, pipe or power lines, sewers and like or similar property located in such roads, streets, alleys and other public places in such cities and towns shall be maintained and protected in the same, as the same shall exist at the time of the entry in the United States land office of the land embracing such city or town, and the right to continue to use such property for the purposes for which said property was intended, is hereby acknowledged and confirmed. [L. '09, p. 822, § 4.]

§ 11489. [9443.] What Plat must Show.

Such plat must show as follows:

(a) All streets, alleys, avenues, roads and highways, and the width thereof.

(b) All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.

(c) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.

(d) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.

(e) The location of all stone or iron monuments set to establish street lines.

(f) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

(g) The location of all section corners, quarter section or meander corners of sections within the limits of said plat.

(h) In case no such section or quarter section or meander corners are within the limits of the plat, it must show a connection line to

some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [L. '09, p. 823, § 5.]

§ 11490. [9444.] Designation of Street Corners—Monuments, etc.

Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot. [L. '09, p. 823, § 6.]

§ 11491. [9445.] Monuments—Requisites—Surveyor's Certificate on Plat.

If a stone is used as a monument, it must have a crosscut in the top at the point of intersection of the center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field-notes and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this act, stating the date of survey, and verify the same by his oath. [L. '09, p. 824, § 7.]

§ 11492. [9446.] Original Plat Filed—Auditor's Fee.

All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats and the field-notes accompanying the same shall be the sum of ten dollars. [L. '09, p. 824, § 8.]

§ 11493. [9447.] Assessments.

Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceed-

ing one-half acre in area shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwelling or for business purposes each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which money so assessed must be received by the clerk and be paid by him into the city or town treasury. [L. '09, p. 824, § 9.]

§ 11494. [9448.] Claims Filed With Town Clerk—Fees and Assessments.

Every person, company, corporation or association claimant of any city or town lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within three months after the patent (or certified copy thereof) from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person or by duly authorized agent, attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons, to the best of his knowledge and belief, and stating who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall certify to be due for the assessment mentioned in the preceding section, together with the further sum of four dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this act, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lands claimed. [L. '09. p. 825, § 10.]

§ 11495. [9449.] Additional Assessments.

If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of

land in such city or town, and declare the same upon the basis set down in section 11494 of this title, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinafter [hereinbefore] mentioned, or at the time when the deed of conveyance hereinbefore [hereinafter] provided for, is issued. [L. '09, p. 826, § 11.]

§ 11496. [9450.] Deed to Claimants—Actions Contesting Title—Limitations.

At the expiration of six months after the time of filing of such patent, or a certified copy thereof in the office of the county auditor, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, his or her, its or their heirs, executors, administrators, grantees, successors or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this act provided, concludes the rights of third persons, but such third persons may have their action in the premises, to determine their alleged interest in such lands and their right to the legal title thereto against such grantee, his, or her, its or their heirs, successors or assigns, to which they may deem themselves entitled either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their legal representatives or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situate; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon the possessory claim or title to real estate, when such action is barred by law at the time of the passage of this title. [L. '09, p. 826, § 12.]

§ 11497. [9451.] Entries on Mineral Lands—Rights of Mineral Claimant.

Townsite entries may be made by incorporated towns or cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, that no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [L. '09, p. 827, § 13.]

§ 11498. [9452.] Conflicting Claims—Procedure.

In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his action in a court of competent jurisdiction within six months after the time of filing of the patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this title, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant. [L. '09, p. 827, § 14.]

§ 11499. [9453.] Notice of Filing Patent—Abandonment of Claim.

The said council must give public notice by advertising for four weeks in a newspaper published in said city or town, or, if there be no newspaper published in said city or town, then by publication in some newspaper having general circulation in such city or town, and not less than five written or printed notices must be posted in public places within the limits of such city or townsite; such notice must state that patent for said townsite (or certified copy thereof) has been filed in the county auditor's office. If any person, company, association or any other claimant of lands in such city or town fails, neglects or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this title, within three months after filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the same and to have forfeited all right, title and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots shall be sold as unoccupied lands, and the proceeds thereof placed in the special fund in this title mentioned. [L. '09, p. 828, § 15.]

§ 11500. [9454.] Sale of Unoccupied Lots—Notice—Minimum Price.

All lots in such city or townsite which were unoccupied at the time of the entry of said townsite in the United States land office shall be sold by the corporate authorities of such city or town, or under their direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale or sales shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted for at least thirty days prior to the date of said sale, and by publishing a like notice for four consecutive weeks prior to such sale in a newspaper published in such city or town, or, if no such newspaper be published in such city or town, then in some newspaper having general circulation in such city or town, and deeds shall be given therefor to the several purchasers: Provided, that no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided in section 11493, and all moneys arising from such sale, after deducting the costs and expenses of such sale or sales, shall be placed in the treasury of such city or town. [L. '09, p. 829, § 16.]

§ 11501. [9455.] Lands for School and Municipal Purposes—Funds.

All school lots or parcels of land, reserved or occupied for school purposes, must be conveyed to the school district in which such city or town is situated, without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for municipal purposes must be conveyed to such city or town without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this act are a charge against the city or town on behalf of which the work was done, and such expenses necessarily incurred, either before or after the incorporation thereof, shall be paid out of the treasury of such city or town upon the order of the council thereof; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this act shall be paid into the city or town treasury by the officer or officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be expended under the direction of the city or town council for public improvements in such city or town. [L. '09, p. 829, § 17.]

§ 11502. [9456.] Informalities not to Invalidate.

No mere informality, failure or omission on the part of any of the persons or officers named in this title invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this title is prima facie evidence that all preliminary proceedings in relation thereto have been correctly taken and performed, and that the recitals therein are true and correct. [L. '09, p. 830, § 18.]

§ 11503. [9457.] Duties of Corporate Authorities.

Such corporate authorities shall promptly execute and perform all duties imposed upon them by the provisions of this title. [L. '09, p. 830, § 19.]

§ 11504. [9458.] Proof.

No deed to any lot or parcel of land in such townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, successors in interest or assigns of such occupant of any lot, as such, may receive such deed. [L. '09, p. 830, § 20.]

§ 11505. [9459.] Unincorporated Towns—Superior Judge to File Claim.

It is the duty of the judge of the superior court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situate upon lands the legal and equitable title to which is in the United States of America, or situate upon public lands of the United States within the county wherein such superior court is held, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and valid regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect the intentions of this title, and the intention of the act of congress of the United States, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, and to file in the proper United States land office a proper application in writing, describing the tracts of land on which such incorporated town is situated, and all lands entitled to be embraced in such government townsite entry, and make proof and payment for such tracts of land in the manner required by law. [L. '09, p. 831, § 21.]

§ 11506. [9460.] Petition to Superior Judge, Requisites of.

The judge of the superior court of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any such unincorporated town, whose names appear upon the assessment-roll for the year preceding such application in the county wherein such unincorporated town is situated—which petition shall set forth the existence, name and locality of such town, whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands an accurate description according to the government survey of the legal subdivisions sought to be entered as a government townsite must be stated; the estimated number of its inhabitants; the approximate number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under such acts of congress—must estimate the cost of entering such land, and of the survey, platting and recording of the same, and must indorse such estimate upon such petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said judge may cause an enu-

meration of the inhabitants of such town to be made by some competent person, exhibiting therein the names of all persons residing in said proposed townsite and the names of occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, and cause such enumeration to be presented to such judge. [L. '09, p. 831, § 22.]

§ 11507. [9461.] Survey and Plat—Boundaries—Monuments.

Such judge must thereupon cause a survey to be made by some competent person, of the lands which the inhabitants of said town may be entitled to claim under said acts of congress, located according to the legal subdivisions of the sections according to the government survey thereof, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor, occupant or claimant; and in case of any disputed claim as to lots, lands, premises or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely; said surveyor shall survey, lay out and plat all of said lands, whether occupied or not, into lots, blocks, streets and alleys. [L. '09, p. 832, § 23.]

§ 11508. [9462.] Plats—Scale, Filing—Blocks, Lots, etc.

The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field-notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file such copy of said field-notes in his office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area. [L. '09, p. 832, § 24.]

§ 11509. [9463.] Survey—Notice — Bids for, etc. — Franchises Undisturbed.

Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in said town, if one there be. The survey of said townsite must be made to the best advantage and at the least expense to the holders, claimants, possessors and occupants thereof. The said judge is hereby authorized and directed to receive bids for such surveying, platting and furnishing copies of the field-notes, and to let the same by contract to the lowest competent bidder: Provided, that the possessors, owners, or claimants of waterworks, electric light, telegraph, telephone, pipe or power lines, sewers, irrigating ditches, drainage ditches, and like or similar property located in such townsites or in the roads, streets, alleys or highways therein or in other public places in such townsite, shall be maintained and protected in the same as the same shall exist at the time of the entry in the United States land office of the land embraced in such government townsite, and the right to continue to use such property, for the purposes for which said property was intended, is hereby acknowledged and confirmed. [L. '09, p. 833, § 25.]

§ 11510. [9464.] Contents of Plats.

Such plat must show as follows:

(a) All streets, alleys, avenues, roads and highways, and the width thereof.

(b) All parks, squares and all other ground reserved for public uses, with the boundaries and dimensions thereof.

(c) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.

(d) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.

(e) The location of all stone or iron monuments set to establish street lines.

(f) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

(g) The location of all section corners, or legal subdivision corners of sections within the limits of said plat.

(h) In case no such section or subdivision corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [L. '09, p. 834, § 26.]

§ 11511. [9465.] Corners—Monuments—Location and Size.

Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their loca-

tion must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot. [L. '09, p. 834, § 27.]

§ 11512. [9466.] Monuments, How Marked—Surveyor's Certificate on Plat.

If a stone is used as a monument it must have a crosscut in the top at the point of intersection of center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field-notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this act, stating the date of survey, and verify the same by his oath. [L. '09, p. 835, § 28.]

§ 11513. [9467.] Plats—Filing Fees.

All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats, and the field-notes accompanying the same shall be the sum of ten dollars. [L. '09, p. 835, § 29.]

§ 11514. [9468.] Assessments—Fund for Expenses.

Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and five [fifty] cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole

of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said townsite lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expense of their location, entry and purchase, and cost and expenses attendant upon the making of such survey, plats, publishing and recording, including a reasonable attorney's fee for legal services necessarily performed, and the persons or occupants in such townsite procuring said townsite entry to be made, may employ an attorney to assist them in so doing and to assist such judge in the execution of his trust, and he shall be allowed by such judge out of said fund a reasonable compensation for his services. [L. '09, p. 835, § 30.]

§ 11515. [9469.] Claims—Filing, Requisites, Fee, Records.

Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge, within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in section 11514. together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this title, and the said judge must thereupon give to such claimant a certificate, signed by him and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each unincorporated government townsite in his county wherein he must make proper entries of the substantial matters contained in such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed. [L. '09, p. 836, § 31.]

§ 11516. [9470.] Additional Assessments for Expenses.

If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses, prove to be insufficient to cover and defray all the necessary expenses, the said judge must estimate the

deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such government townsite, and declare the same upon the basis set down in section 11514; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued. [L. '09, p. 837, § 32.]

§ 11517. [9471.] Deeds to Claimants—Contests of Claims.

At the expiration of six months after the time of filing such patent, or certified copy thereof, in the office of the county auditor, if there has been no adverse claim filed in the meantime, said judge must execute and deliver to such claimant or to his, her, its or their heirs, executor, administrator, grantee, successor or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by such judge as trustee, and attested by the seal of the superior court. No conveyance of any such lands made as in this title provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands, and their right to the legal title thereto, against such grantee, his, her, its or their heirs, executors, administrators, successors or assigns, to which they may deem themselves entitled, either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their heirs, executors, administrators, successors or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the taking effect of this act. [L. '09, p. 837, § 33.]

§ 11518. [9472.] Entries on Mineral Lands—Mineral Rights.

Townsite entries may be made by such judge on mineral lands of the United States, but no title shall be acquired by such judge to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing laws. When mineral veins are possessed within the limits of an unincorporated town, and such possession is recognized by local authority, or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsite to such judge, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, that no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [L. '09, p. 838, § 34.]

Location of mining claim on town site. 7 L. R. A. (N. S.) 796.

§ 11519. [9473.] Adverse Claims—Hearing and Procedure.

In all cases of adverse claims or disputes arising out of the conflicting claims to land or concerning boundary lines, the adverse claimants may submit the decision thereof to said judge by an agreement in writing specifying particularly the subject matter in dispute and may agree that his decision shall be final. The said judge must hear the proofs, and shall execute a deed or deny the execution of a deed in accordance with the facts; but in all other cases of adverse claims the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the patent (or a certified copy thereof) from the United States, in the office of the county auditor. In case such action be commenced within the time herein limited, the plaintiff must serve notice of his pendency upon such judge, who must thereupon stay all proceedings in the matter of granting or executing any deed to the land in dispute until the final decision in such suit; upon presentation of a certified copy of the final judgment in such action, such judge must execute and deliver a deed of the premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. [L. '09, p. 839, § 35.]

§ 11520. [9474.] Costs—Proof of Right.

If in any action brought under this title, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant or claimants to establish that he, she, it or they, was or were, an occupant of the ground in controversy within the meaning of said acts of congress at the time of the entry of said townsite in the United States land office, or is or are the successor, or successors in interest of such occupant. [L. '09, p. 839, § 36.]

§ 11521. [9475.] Notice of Filing of Patent.

Said judge must promptly give public notice by advertising for four weeks in any newspaper published in such town, or if there be no newspaper published in such town, then by publication in some newspaper having general circulation in such town, and not less than five written or printed notices must be posted in public places within the limits of such townsite; such notice must state that the patent for said townsite (or a certified copy thereof) has been filed in the county auditor's office. [L. '09, p. 840, § 37.]

§ 11522. [9476.] Abandonment of Claims.

If any person, company, association, or any other claimant of lands in such townsite fails, neglects or refuses to make application to said judge for a deed of conveyance to said land so claimed, and pay the

sums of money specified in this act, within three months after the filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the claim to such land and to have forfeited all right, title, claim and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots may be sold by such trustee as unoccupied lands, and the proceeds thereof placed in the fund heretofore mentioned in this title. [L. '09, p. 840, § 38.]

§ 11523. [9477.] Sale of Unclaimed Lots—Notice—Minimum Price.

All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: Provided, that no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in section 11514, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned. [L. '09, p. 840, § 39.]

§ 11524. [9478.] Sites for School and Municipal Purposes.

All school lots or parcels of land reserved or occupied for school purposes, must be conveyed to the school district in which such town is situated without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for public purposes must be set apart and dedicated to such public purposes without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this title or said acts of congress are a charge against the fund herein provided for. [L. '09, p. 841, § 40.]

§ 11525. [9479.] Proceeds of Sales and Assessments.

Any sum of money remaining in said fund after defraying all necessary expenses of location, entry, surveying, platting, advertising, filing and recording, reimbursement of moneys loaned or advanced and paying the cost and expenses herein authorized and provided for must be deposited in the county treasury by such judge to the credit of a special fund of each particular town, and kept separate by the county treasurer to be paid out by him only upon the written order of such judge in payment for making public improvements, or for public purposes, in such town. [L. '09, p. 841, § 41.]

§ 11526. [9480.] Informalities not to Invalidate.

No mere informality, failure, or omission on the part of any persons or officers named in this title invalidates the acts of such person or officers; but every certificate or deed granted to any person pursuant to the provisions of this title is prima facie evidence that all preliminary proceedings in relation thereto have been taken and performed and that the recitals therein are true, and correct. [L. '09, p. 841, § 42.]

§ 11527. [9481.] Proof of Occupancy.

No deed to any lot in such unincorporated town or unincorporated government townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath, showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, executors, administrators, successors in interest or assigns of such occupant of any lot, as such, may receive such deed, [L. '09, p. 841, § 43.]

§ 11528. [9482.] Streets, Roads, etc., Dedicated to Public Use.

All streets, roads, lanes and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked and platted, on the map of any townsite, as prescribed and directed by the provisions of this title, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county auditor, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city. [L. '09, p. 842, § 44.]

§ 11529. [9483.] Duties of County Clerk.

All clerical work under this title where a judge of the superior court is trustee must be performed by the clerk of the superior court. [L. '09, p. 842, § 45.]

§ 11530. [9484.] Judge to Account for Moneys Received.

Such judge when fulfilling the duties imposed upon him by said acts of congress, and by this title, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the treasurer of the proper county, and he must promptly settle up all the affairs relating to his trust pertaining to such town. [L. '09, p. 842, § 46.]

§ 11531. [9485.] Records Filed With County Clerk.

Whenever the affairs pertaining to such trust shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of the proper county to be thereafter kept in the custody of such county clerk as public records,

and the county clerk's fee, for the use of his county therefor, shall be the sum of ten dollars. [L. '09, p. 842, § 47.]

§ 11532. [9486.] Judge, a Trustee for Purposes of the Act.

Every such judge when fulfilling the duties imposed upon him by said acts of congress, and by this title, shall be deemed and held to be acting as a trustee for the purposes of fulfilling the purposes of said acts and not as a superior court, and such judge shall be deemed to be disqualified to sit as judge of such superior court in any action or proceeding wherein is involved the execution of such trust or rights involved therein. [L. '09, p. 843, § 48.]

§ 11533. [9487.] Appeals—Procedure.

Appeals and writs of review may be prosecuted to the supreme court from a superior court from the judgment of [or] orders of the superior court in all cases arising under this act or said acts of congress as in other cases and the general statutes as to the commencement of actions, bringing the same to trial, making an entry of judgment, the taking and perfecting appeals, and the making up of the records on appeal and relating to writs of review in the superior and supreme court, and all other procedure in the superior and supreme courts shall be applicable to actions under this act and under said acts of congress. [L. '09, p. 843, § 49.]

§ 11534. [9489.] Succession of Trust.

The successors in office of such superior court judge shall be his successors as trustee of such trust. [L. '09, p. 843, § 51.]

§ 11535. [9490.] Same—Title to Vacated Lots by Occupancy and Improvements.

The judge of the superior court of any county is hereby declared to be the successor as trustee of any territorial probate judge in such county who was trustee under any such acts of congress, and may as such succeeding trustee perform any unperformed duties of his predecessor in office as such trustee, agreeably to the provisions of this title as nearly as may be. And when entry was made by any such probate judge under any of said acts of congress and subsequent to such entry, the city or town situated upon such townsite entry has been incorporated according to law, and the corporate authorities thereof have or have attempted to vacate any common, plaza, public square, public park or the like, in such government townsite, and where thereafter, any person, or corporation, has placed permanent improvements on such land so vacated or attempted to be vacated, exceeding in value the sum of five thousand dollars, with the knowledge, consent, or acquiescence of the corporate authorities of such city or town and with the general consent and approval of the inhabitants of said city or town and such improvements have been made for more than five years and such person or corporation making such improvements has been in the open, notorious and peaceable possession of such lands and premises for a period of more than five

years, such superior court judge, as trustee, of such government townsite, and successor as trustee to such judge or probate, trustee of such government townsite, shall have the power and authority to make and deliver to such person or corporation, or to his or its heirs, executors, administrators, successors or assigns, a deed for such lands and premises, conveying a fee-simple title to such lands and premises upon such terms and for such price as he shall deem just and reasonable under all the facts and surrounding circumstances of the case, and the consideration paid for such deed, one dollar or more, shall be placed in the city or town treasury of such city or town, in the general fund. [L. '09, p. 843, § 52.]

§ 11536. [9491.] Controversies, by Whom Settled—Review.

Except as hereinbefore specially provided, the city or town council in incorporated cities and towns, and the judge of the superior court, as trustee, in cases of unincorporated government townsites, are hereby expressly given power and jurisdiction to hear and determine all questions arising under this act and under said acts of congress and the right to ascertain who were the occupants of lots in such government townsites at the time of the entry thereof in the United States land office, and to determine from sworn testimony who are and who are not entitled to deeds of conveyance to specific lots in such government townsite, subject to review by courts of competent jurisdiction. [L. '09, p. 844, § 53.]

TITLE LXXXII.

TRADEMARKS.

Marks and brands on stock: See *supra*, §§ 3051—3055.

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|---------------------------------------------------------|----------------------------------------------------------------------------|
| 11537. Counterfeiting trademarks prohibited. | 11545. "Person" defined. |
| 11538. Penalty. | 11546. Marking casks, etc.—Description of marks to be filed and published. |
| 11539. Filing and recording. | 11547. Unlawful to use, sell or destroy—Penalty. |
| 11540. Fraudulent filing, etc.—Penalty. | 11548. Use or possession <i>prima facie</i> evidence. |
| 11541. Enjoining use, etc. | |
| 11542. Penalty for unauthorized use. | |
| 11543. Penalty for use of name or seal. | |
| 11544. Penalty for defacing or removing trademark, etc. | |

§ 11537. [9492.] Counterfeiting Trademarks Prohibited.

Whenever any person, or any association or union of workingmen has heretofore adopted or used, or shall hereafter adopt or use, and has filed as hereinafter provided any label, trademark, term, design, device or form of advertisement for the purpose of designating, making known, or distinguishing any goods, wares, merchandise or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale by such person or association or union of workingmen or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trademark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trademark, term, design, device or form of advertisement. [L. '97, p. 65, § 1.]

For former laws on this subject, see L. '91, pp. 29, 30; 1 H. C., §§ 3125—3130; L. '95, p. 344.

See *supra*, §§ 2595—2597, imitating, counterfeiting, and false trademarks.

Cited in 33 Wash. 239; 57 Wash. 193; 94 Wash. 101; 106 Wash. 83.

Marks and Names Subject of Ownership, in General: See Remington's Digest, Trademarks, § 1; Eastern Outfitting Co. v. Manheim, 59 Wash. 428, 110 Pac. 23, 35 L. R. A. (N. S.) 251; Pacific Coast Condensed Milk Co. v. Frye & Co., 85 Wash. 133, 147 Pac. 865; Groceteria Stores Co. v. Tibbett, 94 Wash. 99, 162 Pac. 54, L. R. A. 1917C, 955.

— **Priority of Use:** See Remington's Digest, Trademarks, § 2; Eastern Outfitting Co. v. Manheim, 59 Wash. 428, 110 Pac. 23, 35 L. R. A. (N. S.) 251; Rosenberg v. Fremont Undertaking Co., 63 Wash. 52, 114 Pac. 886; San Francisco Oyster House v. Mihich, 75 Wash. 274, 134 Pac. 921; Groceteria Stores Co. v. Tibbett, 94 Wash. 99, 162 Pac. 54, L. R. A. 1917C, 955.

Abandonment and Extinguishment: See Remington's Digest, Trademarks, § 3;

Rosenberg v. Fremont Undertaking Co., 63 Wash. 52, 114 Pac. 886; New York Life Ins. Co. v. Orpheum Theater & Realty Co., 100 Wash. 573, 171 Pac. 534.

Right to Use of Name: See Remington's Digest, Trademarks, § 6; Wright Restaurant Co. v. Wright, 74 Wash. 230, 133 Pac. 464.

A corporation has no exclusive right to the name "Diamond Drill Contracting Company" where such name was merely descriptive of the business of diamond drill contractors at the time it adopted the name, and the only evidence that in its use the name had acquired a secondary meaning was the testimony of one witness to the effect that he knew of no other company by that name: Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co., 106 Wash. 72, 179 Pac. 120.

Actions: See Remington's Digest, Trademarks, §§ 7—9.

Persons Entitled to Sue and Defenses:
Martell v. St. Francis Hotel Co., 51 Wash. 375, 98 Pac. 1116, 16 Ann. Cas. 593; **Grocery Stores Co. v. Tibbett**, 94 Wash. 99, 162 Pac. 54, L. R. A. 1917C, 955; **New York Life Ins. Co. v. Orpheum Theater & Realty Co.**, 100 Wash. 573, 171 Pac. 534.

— **Pleading:** **Woodcock v. Guy**, 33 Wash. 234, 74 Pac. 358.

— **Permanent Injunction:** **Wright Restaurant Co. v. Seattle Restaurant Co.**, 67 Wash. 690, 122 Pac. 348; **San Francisco Oyster House v. Mihich**, 75 Wash. 274, 134 Pac. 921; **Pacific Coast Condensed Milk Co. v. Frye & Co.**, 85 Wash. 133, 147 Pac. 865; **New York Life Ins. Co. v. Orpheum Theater & Realty Co.**, 100 Wash. 573, 171 Pac. 534.

Right to protection in use of initials as a trademark or trade name, or upon the ground of unfair competition. 11 A. L. R. 1286.

Limitation of right to use one's name as a trade name. 1 L. R. A. (N. S.) 660; 28 L. R. A. (N. S.) 934; L. R. A. 1916C, 255.

Right to use substantially similar word as trademark or trade name as affected by differences in other respects. 12 L. R. A. (N. S.) 729.

Use of geographical name as unfair competition. 10 Ann. Cas. 71; Ann. Cas. 1915A, 543; 26 L. R. A. (N. S.) 73.

Use of color as infringement of trademark or unfair competition. 18 Ann. Cas. 1034; L. R. A. 1915F, 1107.

§ 11538. [9493.] **Penalty.**

Whoever counterfeits or imitates any such label, trademark, term, design, device or form of advertisement, or sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trademark, term, design, device or form of advertisement, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor, in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months. [L. '97, p. 65, § 2.]

See supra, § 2598, when trademark deemed affixed.

Validity of penal statute to protect trademarks. 25 L. R. A. (N. S.) 473.

§ 11539. [9494.] **Filing and Recording.**

Every such person, association or union, that has heretofore adopted or used, or shall hereafter adopt or use, a label, trademark, term, design, device or form of advertisement, as provided in section 11537, may file the same for record in the office of the secretary of state by leaving two copies, counterparts or facsimiles thereof, with said secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trademark, term, design, device or form of advertisement shall be filed, the class of merchandise and a description of the goods to which it has been, or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trademark, term, design, device or form of

advertisement shall be filed, has the right to the use of the same, that no other person, firm, association, union or corporation has the right to such use either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and the facsimile or counterparts filed therewith are true and correct. There shall be paid, for such filing and recording, a fee of two dollars. Said secretary shall deliver to such person, association or union so filing or causing to be filed any such label, trademark, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association or union may apply for, for each of which certificates said secretary shall receive a fee of one dollar. Any such certificate of record shall, in all suits and prosecutions under this act, be sufficient proof of the adoption of such label, trademark, term, design, device or form of advertisement. Said secretary of state shall not record for any person, union or association, any label, trademark, term, design, device or form of advertisement that would probably be mistaken for any label, trademark, term, design, device or form of advertisement theretofore filed by or on behalf of any other person, union or association. [L. '97, p. 66, § 3.]

"Act" refers to §§ 11537—11545.

Cited in 57 Wash. 194.

Proceedings for Registration: See Remington's Digest, Trademarks, § 4; State v. Montgomery, 57 Wash. 192, 106 Pac. 771.

§ 11540. [9495.] Fraudulent Filing, etc.—Penalty.

Any person who shall, for himself, or on behalf of any other person, association or union, procure the filing of any label, trademark, term, design or form of advertisement in the office of the secretary of state, under the provisions of this act, by making any false or fraudulent representations or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby, in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding three months. [L. '97, p. 67, § 4.]

"Act" refers to §§ 11537—11545.

See supra, § 2599, fraudulent registration.

§ 11541. [9496.] Enjoining Use, etc.

Every such person, association or union adopting or using a label, trademark, term, design, device or form of advertisement, as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant in any such suit damages resulting from such manufacture, use, sale or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such person, association or union all profits derived from such wrongful manufacture, use, display or sale; and such court shall also

order that all such counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant, to be destroyed. [L. '97, p. 67, § 5.]

Jurisdiction of suit for infringement of trademark. 15 Ann. Cas. 220.

Protection of public as ground for injunction against misuse of trademark or trade name. L. R. A. 1916D, 119.

Right to enjoin in different locality

use of similar name as trademark or trade name. 35 L. R. A. (N. S.) 254.

Loss of right to relief against infringement of trademark or trade name by acquiescence, laches or delay. 18 Ann. Cas. 459.

§ 11542. [9497.] Penalty for Unauthorized Use.

Every person who shall use or display the genuine label, trademark, term, design, device or form of advertisement of any such person, association or union, in any manner, not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. [L. '97, p. 67, § 6.]

"Act" refers to §§ 11537—11545.

See supra, §§ 2595—2597, counterfeiting, and false trademarks.

See supra, §§ 2680—2683, fraudulent use on silverware.

Cited in 57 Wash. 194.

Criminal Prosecutions.—A complaint for the infringement of a trademark label is sufficient when the charging part is in the words of this section and the label is identified as that of the Allied Printing Trades Council, adopted, used and filed as required by law: State v. Montgomery, 57 Wash. 192, 106 Pac. 771.

§ 11543. [9498.] Penalty for Use of Name or Seal.

Any person or persons who shall, in any way, use the name or seal of any such person, association or union or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. [L. '97, p. 68, § 7.]

§ 11544. [9499.] Penalty for Defacing or Removing Trademark, etc.

Any person using the trademark so adopted and filed by any other person, or any imitation of such trademark, or any counterfeit thereof; or who shall, in any manner mutilate, deface, destroy or remove such trademark from any goods, wares, merchandise, article or articles, or from any package or packages containing the same, or from any empty or second-hand package which has contained the same or been used therefor, with the intention of using such empty or second-hand package, or of the same being used to contain goods, wares, merchandise, article or articles of the same general character as those for which they were first used; and any person who shall use any such empty or second-hand package for the purpose aforesaid, without the consent in writing

of the person whose trademark was first applied thereto or placed thereon shall, upon conviction thereof, be fined in any sum not less than one hundred dollars, or by imprisonment for not more than three months, and the goods, wares, merchandise, article or articles, contained in any such second-hand package or packages shall be forfeited to the original user of such package or packages whose trademark was first applied thereto or placed thereon. The violation of any of the above provisions as to each particular article or package shall be held to be a separate offense. [L. '97, p. 68, § 8.]

See *supra*, § 2594, removal of lawful brands.

§ 11545. [9500.] "Person" Defined.

The word "person," in this act, shall be construed to include a person, copartnership, corporation, association or union of workingmen. [L. '97, p. 68, § 9.]

"Act" refers to §§ 11537—11545.

Cited in 53 Wash. 355.

§ 11546. [9501.] Marking Casks, etc.—Description of Marks to be Filed and Published.

All persons engaged in the manufacture, bottling, or selling of ale, porter, lager beer, soda, mineral water, or other beverages in casks, kegs, bottles or boxes, with their names or other marks of ownership stamped or marked thereon, may file in the office of the secretary of state, and also in the office of the auditor of the county in which such articles are manufactured, bottled or sold, a description of names or marks so used by them, and cause the same to be printed for six successive weeks in a weekly newspaper, printed in the English language, in counties where no daily newspaper is printed or published; and in counties where a daily newspaper is printed and published, the same shall be published in a daily newspaper of general circulation, printed in the English language, six times a week for six successive weeks, in counties where such articles are manufactured, bottled or sold. [L. '97, p. 50, 1.]

§ 11547. [9502.] Unlawful to Use, Sell or Destroy—Penalty.

It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of section 11546. Any person or persons who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined five dollars for each and every cask, barrel, keg or box, and fifty cents for each and every bottle so by him, her or them filled, bought, sold, used, trafficked in or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg and box

and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense. [L. '97, p. 51, § 2.]

"Act" refers to §§ 11546—11548.

§ 11548. [9503.] Use or Possession Prima Facie Evidence.

The using by any person other than the rightful owner thereof, without such written permission, of any such cask, barrel, keg, bottle or box, for the sale therein of ale, porter, lager beer, soda, mineral waters or other beverages, or to be furnished to customers, or the buying, selling or trafficking in any such barrel, keg, bottle or box, by any person other than the owner, without such written permission, or the fact that any junk dealer or dealers in casks, barrels, kegs, bottles or boxes, shall have in his or her possession any such cask, barrel, keg, bottle or box so marked or stamped and registered as aforesaid, without such written permission, shall and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in or possession is unlawful within the meaning of this act. [L. '97, p. 51, § 3.]

"Act" refers to §§ 11546—11548.

Trading Stamps. See "Frauds," § 5832.

Training Schools. See "Prisons and Reformatories," § 10299; "Education," §§ 4624, 4630.

Treasurer. See "Counties," § 4106; "State Officers," § 11019.

Trespass. See § 939.

On public lands, see "Lands of the State," § 8073.

Trial. Of civil actions, see §§ 322—378.

Of civil actions in justice's court, see §§ 1847—1856.

In criminal actions, see §§ 2131—2180.

Truant Schools. See "Prisons and Reformatories," § 10201.

Trust Companies. See "Banks and Banking and Trust Companies," § 3208.

Tuberculosis. See "Health," § 6109.

Turnpike Roads. See "Highways," § 6555.

Unclaimed Property. See "Lost and Unclaimed Property," § 8416.

United States. See "Lands of the State," § 8108; "Navigation," § 9664.
Federal aid (see Highways), §§ 6845—6851.

University Lands. See "Finance," § 5546; "Lands of the State."

University Museums. See "Libraries, Museums and Historical Society," § 8255.

University of Washington. See "Education," § 4544.

USURY—WAREHOUSE RECEIPTS.

Usury. See "Interest," § 7304.

Vacancies. See "Officers," § 9949.

Vagrants. Proceedings against, see § 1967.

Venue. Of civil actions, see §§ 204—219.

In probate proceedings, see § 1376.

Of criminal actions, see §§ 2012—2021.

Verdict. See §§ 362—366.

Abstract of, see § 431-1.

In criminal actions, see §§ 2131—2180.

Vessels. See "Navigation," § 9843.

Liens on, see §§ 1182—1187.

Veterans. See "Soldiers and Sailors," § 10727.

Veterinarian. See "Physicians," § 10040.

Viaducts. See "Municipal Corporations," § 9001.

Vital Statistics. See "Health," 6011.

Wages. See "Labor Law," § 7594.

Warehouse Receipts. See "Bills and Notes."

TITLE LXXXIII.

WAREHOUSES.

Warehouse receipts and bills of lading. See *supra*, § 3587 et seq.

Regulation of, see "Inspection," § 6978.

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| 11549. "Public terminal warehouse" defined—Classification. | 11559. Class B warehouse receipts—Inspection—Weighing. |
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§ 11549. [9503-1.] "Public Terminal Warehouse" Defined—Classification.

The term "public terminal warehouse" wherever used in this act shall be held and construed to mean any elevator or warehouse located in the cities of Tacoma, Seattle and Everett, or at any other point in the state which may hereafter be designated as a terminal point by the public service commission of Washington, in which grain is received from the public for storage and the grain of different owners mixed together or stored in special piles or bins and for which receipts are issued covering the grain received.

Public terminal grain warehouses shall be of two classes, to wit: "Class A" grain warehouses and "Class B" grain warehouses. Class A grain warehouses shall include all warehouses the proprietors of which shall elect to take licenses under the provisions of this act relative to grain warehouses issuing registered grain warehouse receipts. All other public terminal warehouses shall be known as Class B grain warehouses. [L. '15, p. 538, § 1.]

§ 11550. [9503-2.] Licenses Required—Fees—Bond—Revocation—Appeal.

The proprietor, lessee or manager of every public terminal grain warehouse shall, before transacting any business as warehouseman, procure from the public service commission of Washington, annually, before the first day of July of each year, a license permitting said proprietor, lessee or manager to transact business as a public terminal grain warehouseman, which license shall be issued upon a written application therefor, setting forth the location and name of the grain warehouse and the capacity thereof in tons of grain, and the name or names of each person

interested as owner or proprietor in the management of the same, or if the warehouse be owned or managed by a corporation the name of the corporation and of the president, secretary and treasurer of such corporation shall be stated. For each license issued under the provisions of this act, the applicant therefor shall pay a fee of five dollars, and shall execute and file with the public service commission of Washington a bond to the state of Washington, with good and sufficient surety, to be approved by the commission, in a penal sum to be fixed by the commission based upon the capacity of the warehouse, but in no case less than ten thousand dollars, conditioned for the faithful compliance by the principal with all of the provisions of this act, and for the faithful performance of the duties of the principal as a public terminal grain warehouseman, and for the payment of all damages that may be recovered against him for any failure in the performance of his duty as a public terminal grain warehouseman.

All licenses issued under the provisions of this act shall be revocable by the public service commission of Washington, after a full hearing, upon satisfactory proof of any violation of the law governing public terminal grain warehouses, and evidence may be taken at such hearing in such manner as may be directed by and under the rules adopted by the public service commission of Washington. From any decision of the public service commission of Washington refusing to grant or revoking a license, an appeal may be taken by the person aggrieved by such decision to the superior court of the county where the warehouse for which a license was applied for and refused, or the license of which was revoked is situated. [L. '15, p. 538, § 2.]

See *infra*, §§ 10783, 10784, duties devolve upon director of public works.

See *infra*, § 10848, duties as to inspection of grain devolve upon director of agriculture.

See *infra*, § 10893, public service commission abolished.

§ 11551. [9503-3.] Unlawful to Operate Without License.

It shall be unlawful for any person, firm or corporation to transact the business of a public terminal grain warehouseman, without first procuring a license, as hereinabove provided, or to continue to transact business after any such license has been revoked: Provided, that a warehouseman whose license has been revoked shall be permitted to deliver grain previously stored in his warehouse. [L. '15, p. 539, § 3.]

§ 11552. [9503-4.] Grain to be Inspected and Weighed.

It shall be unlawful for any grain warehouseman to receive in any public terminal grain warehouse any grain that has not been inspected and weighed in by a duly authorized grain inspector of the state of Washington, or to deliver out of any Class A grain warehouse any grain that has not been weighed out by a duly authorized state grain inspector. [L. '15, p. 540, § 4.]

§ 11553. [9503-5.] Registrar of Warehouse Receipts—Bond.

The chief clerk in the office of the grain inspector at each terminal point shall be *ex-officio* the registrar of warehouse receipts at that point

and shall receive in addition to his salary as chief clerk a salary of twenty-five dollars per month as registrar of warehouse receipts, and shall execute and file with the secretary of state an official bond in the penal sum of five thousand dollars, the premium for which shall be paid by the state, conditioned for the faithful performance of his duties in compliance with the provisions of this act. [L. '15, p. 540, § 5.]

§ 11554. [9503-6.] Class A Warehouse Receipts—Form and Registration.

It shall be the duty of every public terminal grain warehouseman conducting a Class A grain warehouse to, upon the receipt of any grain, issue or cause to be issued a receipt therefor in compliance with the "uniform warehouse receipts act" of Washington, and to within thirty-six hours file with the registrar of warehouse receipts, at the terminal point where such warehouse is situated, a report showing the amount of grain received, the name of the owner thereof, the numbers of the receipts issued therefor and the number and initial of the car, or name of the vessel from which the grain was received, accompanied by the warehouse receipts for registration. And it shall be unlawful for any grain warehouseman to limit or modify his responsibility as imposed by law, by any words inserted in any such receipt, or by any contract relative thereto. Upon the receipt of such report and warehouse receipts, it shall be the duty of the registrar of warehouse receipts to register such receipts in a book to be kept for that purpose and stamp on each of such receipts the word "Registered," with the date of registration and affix his signature thereto, and return said receipt to the warehouseman for delivery to the owner. [L. '15, p. 540, § 6.]

See supra, § 3588, form of receipts in general.

§ 11555. [9503-7.] Cancellation of Receipts.

Whenever the owner or any indorsee of any registered warehouse receipt shall desire to remove the grain represented thereby, or any part thereof, from the warehouse, or shall desire to divide one receipt into two or more receipts, or to consolidate two or more receipts into one, he shall present such receipts to the registrar of warehouse receipts to be registered for cancellation. Upon presentation of any such receipt or receipts for registration for cancellation, the registrar of warehouse receipts shall stamp thereon the words "Registered for Cancellation" with the date of presentation, and affix his signature thereto. [L. '15, p. 541, § 7.]

§ 11556. [9503-8.] Delivery of Grain—Receipts for Balances Undelivered.

It shall be unlawful for any warehouseman conducting a Class A warehouse to deliver from such warehouse any grain except upon the return of the registered receipt therefor stamped with the words "Registered for Cancellation" and bearing the date of registration for cancellation and the signature of the registrar of warehouse receipts. And it shall be the duty of the warehouseman or his duly authorized agent delivering any grain from a Class A grain warehouse to plainly stamp

across the face of the receipt therefor the word "canceled," sign and date the same and within thirty-six hours after the last of the grain has been delivered, file with the registrar of warehouse receipts a report giving the numbers of the receipts canceled, and the registrar shall upon the receipt of such report enter the fact of such cancellation in the record in his office. In case only a portion of the grain represented by any receipt canceled shall be delivered out of the warehouse, the warehouseman shall issue a receipt for the balance remaining in the warehouse, which receipt shall bear the same date as the original and shall state on its face that it is the balance of the receipt of the original number, and shall transmit such new receipt to the registrar of warehouse receipts for registration. [L. '15, p. 541, § 8.]

See *supra*, § 3593, duty of warehouses to deliver.

See *supra*, § 3597, duty to cancel.

See *supra*, § 6987, warehouse charges.

§ 11557. [9503-9.] Partition or Consolidation of Receipts.

Whenever the owner of any grain warehouse receipt shall present the same to the warehouseman stamped "Registered for Cancellation" and demand two or more receipts for the grain represented by one such receipt, the warehouseman, or his duly authorized agent, shall stamp on the face of the receipt presented the word "Canceled," sign and date the same and issue new receipts which new receipts shall express on their face the fact that they are parts of another receipt and giving the number of the original receipt of which they are parts, and shall bear the same date as the original receipt. Whenever the holder of two or more receipts shall present the same to a warehouseman stamped "Registered for Cancellation" and demand a consolidated receipt for the aggregate amount of such receipts, the warehouseman, or his duly authorized agent, shall stamp on the face of the receipts presented the word "canceled" and date and sign the same and issue a new receipt which shall express on its face the fact that it is a consolidation of other receipts, giving the numbers of the receipts so consolidated, and such new receipt shall bear the average date of the receipts canceled, as near as may be. [L. '15, p. 542, § 9.]

§ 11558. [9503-10.] Duty to Furnish Information to Registrar.

It shall be the duty of every warehouseman conducting a Class A grain warehouse, to, upon the demand of the registrar of warehouse receipts for the terminal point where such warehouse is situated, furnish such registrar in such form as he may require such information regarding receipts issued or canceled, or shipments of grain received or delivered, as may be necessary to enable the registrar to keep a full and correct record of all business transacted by said warehouse. [L. '15, p. 542, § 10.]

§ 11559. [9503-11.] Class B Warehouse Receipts—Inspection—Weighing.

It shall be unlawful for any warehouseman conducting a Class B grain warehouse to receive any grain into his warehouse without having the same inspected and weighed in by a state grain inspector, and it shall be the duty of every such warehouseman, to, upon request, issue

or cause to be issued a receipt for each consignment of grain received, showing the weight, kind and grade of such grain, the name of the owner thereof and the date when the same was received, but such receipts shall not be entitled to registration and grain shall be delivered from such warehouse without the supervision of the registrar of warehouse receipts. [L. '15, p. 542, § 11.]

§ 11560. [9503-12.] Fees for Inspection and Weighing—Certificates.

The fees for weighing out grain from a Class A grain warehouse and for inspecting out grain in case the owner desires inspection out, shall be fixed by the public service commission of Washington, and the state grain inspectors, may, when requested so to do by persons desiring grain inspected out, issue certificates of inspection in accordance with the names of the grains used in the markets to which the grain is to be shipped. [L. '15, p. 543, § 12.]

See supra, § 6991, fees for grading, etc., fixed by director of agriculture.

§ 11561. [9503-13.] Duplicate Receipts in Case of Loss.

In case any warehouse receipt issued by a public terminal grain warehouse shall be lost or destroyed, the owner thereof shall be entitled to a duplicate receipt upon executing and delivering to the warehouseman issuing such receipt, a sufficient bond with good and sufficient surety to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and such duplicate receipt shall state that it is issued in lieu of the former receipt, giving the number and date thereof. [L. '15, p. 543, § 13.]

See, also, supra, § 3600.

§ 11562. [9503-14.] Unlawful Issuance of Receipts or Delivery of Grain.

It shall be unlawful for any public terminal grain warehouseman to issue a receipt for grain except on the actual delivery of the grain into the warehouse, or to issue a receipt for a greater amount of grain than that actually received. And it shall be unlawful for any person to remove, or deliver, or direct, assist or permit any person to remove, or deliver any grain from any public terminal warehouse for which a warehouse receipt has been issued and is outstanding without receiving and canceling the warehouse receipt issued therefor, or to remove or deliver, or direct, assist or permit any person to deliver, or remove grain from any public terminal grain warehouse whereby the amount of any grade, or class of grain in such warehouse is reduced below the amount for which warehouse receipts for the particular grade are outstanding. And every person violating any of the provisions of this section, and every grain inspector knowingly permitting any grain to be delivered out of any Class A grain warehouse without written notice, signed by the registrar of warehouse receipts that the receipts for such grain have been registered for cancellation, shall be guilty of a felony. [L. '15, p. 543, § 14.]

§ 11563. [9503-15.] Penalty.

Every person violating any provisions of this act, for the violation of which a specific penalty is not provided, and every person failing to comply with the provisions of this act shall be guilty of a gross misdemeanor. [L. '15, p. 544, § 15.]

§ 11564. [9503-16.] Act Cumulative.

This act shall not be construed as amending or repealing any act or law relating to the inspection of grain, but shall be considered and held to be additional legislation relating to the inspection and weighing of grain at public terminal grain warehouses. [L. '15, p. 544, § 16.]

§ 11565. [9503-17.] Date of Taking Effect.

This act shall take effect and be in operation on and after July 1, 1915. [L. '15, p. 544, § 17.]

§ 11566. Eminent Domain by Public Warehouse and Elevator Companies.

The right of eminent domain is hereby extended to corporations incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to secure warehouse or elevator sites or rights of way for roadways leading to and from the same or for wharves or boat landings on navigable waters and all other purposes incident to and connected with the business conducted by such warehouse or elevator. [L. '19, p. 233, § 1.]

§ 11567. Entry upon Lands for Location and Survey.

Every corporation incorporated or that may hereafter be incorporated under the laws of this state or of any other state or territory, and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities, which may desire to erect and operate any such public warehouse or elevator, or to erect and operate tramways or cable tramways for the purpose of carrying, conveying or transporting such grain, produce or commodities to or from such warehouse or elevator or to acquire rights of way for roadways to and from such warehouse or elevator or to acquire boat landing or wharving facilities in connection with such warehouse or elevator shall have the right to enter upon any lands proposed to be used for any such purpose for the purpose of examining, locating and surveying the lines and boundaries thereof, doing no unnecessary damage thereby. [L. '19, p. 234, § 2.]

§ 11568. Right of Appropriation.

Every such corporation shall have the right to appropriate real estate and other property for any or all of the said purposes and under the

same procedure as now is or may be hereafter provided by law, in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [L. '19, p. 234, § 3.]

§ 11569. Exception—Port Districts and Railway Rights of Way—Termination of Public Necessity.

The right hereby granted shall not be exercised within the limits of any regularly organized port district, nor against the right of way of any railroad company within the yard limits thereof, nor unless and until the public service commission after a full hearing shall have determined that existing facilities are inadequate and that a public necessity exists for the construction of additional facilities and shall specify what additional facilities are necessary and shall have further determined that the facilities contemplated to be established will be a public benefit. Such hearing shall be initiated and conducted in accordance with the statutes, rules and regulations relating to public hearings before the public service commission. [L. '19, p. 235, § 4.]

Waste. See § 937.

TITLE LXXXIV.

WATER AND WATER-POWER COMPANIES.

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CHAPTER II.—WATER AND POWER DISTRICTS.

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CHAPTER I.

POWERS AND RIGHTS OF APPROPRIATION.

§ 11570. [9504.] Water Company may Acquire Lands and Water for Its Purposes.

Water companies, incorporated for the purposes specified in section 3804, shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water, upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right of way for laying pipes and aqueducts for the use of the company, when the parties cannot agree, shall, so far as the same is applicable, be as prescribed in sections 10535—10539 and 6585—6597: Provided, that nothing therein contained shall be so construed as to authorize the appropriation of water belonging to any person, unless the owner thereof shall refuse to supply said town

or city with water, after being requested so to do by the town board or city council. [L. '69, p. 340, § 30; L. '73, p. 408, § 28; Cd. '81, § 2448; L. '83, p. 45, § 8; 1 H. C., § 1522.]

See supra, § 2543, penalty for furnishing impure water.

See supra, §§ 2542, 9281, 9473—9477, pollution of water supply.

See supra, §§ 2656, 2657, injury to appliances, pipes and mains.

See supra, § 3804, incorporation of.

See supra, §§ 6585—6597, appropriation for toll roads and bridges.

See supra, §§ 10535—10539, appropriation by railroads of crossings and highways.

Cited in 33 Wash. 545; 51 Wash. 391.

Appropriation of Waters in General: See Remington's Digest, Waters, §§ 1—21, and cases cited.

Natural Watercourse, and Rights and Liabilities in General: See Remington's Digest, Waters, §§ 22—47, and cases cited.

Subterranean and Surface Waters and Lakes and Ponds, In General: See Remington's Digest, Waters, §§ 48—57, and cases cited.

Appropriation and Prescription: See Remington's Digest, Waters, §§ 58—63, and cases cited.

Public Water Supply, Power and Rights in General: See Remington's Digest, Waters, §§ 75—102, and cases cited.

A mining company authorized by its articles to acquire "water rights" is a "water company" within this act authorized to condemn thereunder: *State ex rel. Worrell v. Superior Court*, 33 Wash. 542, 74 Pac. 686.

A water company having a municipal franchise to supply water to a city is within this section: *State ex rel. Shropshire v. Superior Court*, 51 Wash. 386, 99 Pac. 3.

§ 11571. [9505.] Water Company must First Obtain Right or Privilege from City.

Water companies hereafter incorporating, under the provisions of this act, must first obtain from the corporate authorities of a city or town intended to be supplied with water the right or privilege so to do; but nothing herein contained shall affect parties now acting under legislative grants or franchises. [L. '69, p. 341, § 31; L. '73, p. 408, § 29; Cd. '81, § 2449; 1 H. C., § 1523.]

See supra, §§ 6430—6433, county franchise.

See supra, § 7354, eminent domain by irrigation companies.

See supra, §§ 8966, 9034, 9175, 9488, power of cities to acquire and control.

Cited in 51 Wash. 391.

§ 11572. [9506.] Right of Eminent Domain.

The right of eminent domain for the purpose of appropriating real estate is hereby extended to all corporations that are now or that may hereafter be incorporated under the laws of this state, or of any state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe-lines, tunnels or any other means for the utilization of water-power: Provided, however, that said right of eminent domain shall not be exercised in respect to any residence or business structure or structures. [L. '01, p. 299, § 1.]

§ 11573. [9507.] Right to Enter and Survey, etc.

Every corporation that is now or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe-lines, tunnels or any other means for

the utilization of water-power, shall have the right to enter upon any land between the termini of the proposed ditches, flumes, pipe-lines, tunnels or any other means for the utilization of water-power, for the purpose of examining, locating and surveying such ditches, flumes, pipe-lines, tunnels or any other means for the utilization of water-power, doing no unnecessary damage thereby. [L. '01, p. 299, § 2.]

§ 11574. [9508.] Right to Appropriate Real Estate.

Every such corporation shall have the right, subject to the proviso contained in section 11572 to appropriate real estate or other property for a right of way for such ditches, flumes, pipe-lines, tunnels or other means of conveying water, and for any other corporate purposes, in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of the state to exercise the right of eminent domain. [L. '01, p. 300, § 3.]

See *supra*, § 11570, and notes.

§ 11575. [9509.] Right to Appropriate Water, and Build Dams, Reservoirs, etc.

Any person or persons, or company now incorporated, or that may hereafter become incorporated under the laws of this state, for the purpose of mining or manufacturing, shall have the right to purchase or appropriate and take possession of and divert from its natural channel, and use and hold the waters of any river, creek, or stream in this state that may be required for the mining and manufacturing purposes of any such person or persons, corporation or corporations, and to construct all dams, canals, reservoirs, ditches, pipes, flumes, and aqueducts suitable and necessary for the controlling, directing, and running such waters to their mines or manufacturing establishments of any such person or persons, corporation or corporations, where the same may be intended to be utilized for such purposes: Provided, that no such appropriation or diversion of the waters of any such river, creek, or stream from its natural channel, nor shall any such dam, canal, reservoir, ditch, pipe, flume, or aqueduct be constructed, to the detriment of any person or persons, corporation or corporations, occupying the lands or being located below the point or place of such appropriation or diversion on any such stream or its tributaries, or above or below such dam, canal, reservoir, ditch, pipe, flume, or aqueduct, or of the owners of the lands through which the waters run in the natural course for the deprivation of the same, or the owners of the land through or upon which such dam, canal, reservoir, ditch, pipe, flume, or aqueduct may pass through or over, or be situated upon, unless just and adequate compensation be previously ascertained and paid therefor. [L. '79, p. 124, § 1; 1 H. C., § 1589.]

See *supra*, § 2658, injury to dams and reservoirs.

See *supra*, § 7354, eminent domain for use of water.

§ 11576. [9510.] Corporations Conveying Water may Appropriate Lands.

All corporations authorized to do business in the state, and who have been or may hereafter be organized, for the purpose of erecting and

maintaining flumes and aqueducts to convey water for consumption or for mining, irrigation, milling, or other industrial purposes, shall have the same right to appropriate lands for necessary corporate purposes, and under the same regulations and instructions as are provided for other corporations; and such corporations organized for such purposes, in order to carry out the object of their incorporation, are authorized to take and use any water not otherwise legally appropriated. [L. '79, p. 134, § 1; Cd. '81, § 2472; 1 H. C., § 1587.]

See *supra*, § 11570.

See *supra*, § 10462, power to build dikes, etc.

Cited in 20 Wash. 458; 36 Wash. 383, 385; 67 Wash. 557.

Irrigation companies, under this section, are public carriers of water: *Prescott Irr. Co. v. Flathers*, 20 Wash. 454, 55 Pac. 635.

This section did not authorize the condemnation of state school lands: *State ex rel. Attorney General v. Superior Court*, 36 Wash. 381, 78 Pac. 1011.

Under this section an irrigation company may condemn land for a reservoir site, that being a "necessary corporate purpose" within the act, where it is necessary to store water in order to accomplish irrigation: *State ex rel. Golden Valley Irrigation Co. v. Superior Court*, 67 Wash. 556, 122 Pac. 19.

§ 11577. Appropriation and Delivery of Public Waters Beyond State Boundaries.

That whenever the use of water shall be necessary for domestic, manufacturing, irrigation, or in interstate transportation at or for any incorporated or unincorporated city, town, village or hamlet situated partly in Washington and partly in an adjoining state or where any city, town, village or hamlet is incorporated on one side of the state line and there are inhabitants living in adjacent and contiguous territory on the other side, it shall be lawful for any person, association or corporation to locate, appropriate, divert and deliver any of the unappropriated public waters of this state necessary for the use of such city, town, village or hamlet and the inhabitants thereof and those residing in and embracing such contiguous territory both within this state and such adjoining state; and locations may be made and authority is hereby granted for such purpose the same as for any other appropriation within the state and a diversion and delivery for such purpose shall have the same force and effect as if made for use wholly within this state and any appropriation, diversion or use heretofore made for such purpose shall be deemed as valid and legal as if made for a use wholly within this state and the priority thereof shall date from the appropriation and diversion the same as if it had been made for use wholly within this state. [L. '19, p. 85, § 1.]

§ 11578. Reciprocal Grants by Adjoining States.

The provisions of this act shall not apply to any territory or the inhabitants thereof situated or located in any adjoining state which does not by its laws, usages or legal regulations grant similar or reciprocal rights, privileges and opportunities to this state and its inhabitants and adjacent and contiguous territory whether incorporated or unincorporated as in this act specified. [L. '19, p. 86, § 2.]

CHAPTER II.

WATER AND POWER DISTRICTS.

§ 11579. [9510-1.] Water Districts Authorized.

Water districts for the acquirement, construction, maintenance, operation, development and regulation of a water supply system within such districts are hereby authorized to be established in the various counties of this state, as in this act provided. [L. '13, p. 533, § 1.]

§ 11580. [9510-2.] Formation of District.

At any general election, or at any special election which may be called for that purpose, the board of county commissioners of any county in this state shall on petition of at least twenty-five per cent of the qualified electors residing within the district described in said petition, submit to the voters residing within said district the proposition of creating a water district which shall be coextensive with the territory described in said petition, and the board of county commissioners shall submit such proposition at a special election to be called therefor when such petition so requests. Provided, that if a protest signed by twenty-five per cent of the qualified electors of any incorporated city or town included within the boundaries of the proposed district, showing that such city or town has sufficient water supply, shall be filed with the county auditor at any time within thirty days from the date of filing such petition for the formation of the district, and if after a hearing on said petition, at which all interested parties may have an opportunity to be heard, the commissioners shall find such city or town has an adequate water supply and does not desire to be included in the district petitioned for, such city or town shall be excluded from said proposed district. [L. '15, p. 55, § 1. Cf. L. '13, p. 533, § 2.]

§ 11581. [9510-3.] Petition—Proceedings.

The petition presented to the board of county commissioners shall set forth the territorial extent of the proposed water district, particularly describing the same, and shall be filed with the county auditor who shall within sixty days examine the signatures thereto and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in possession of the officers of any incorporated city or town in such proposed district. If any protest signed by twenty-five per cent of the qualified electors of any city or town shall be filed with the county auditor within thirty days after the filing of the petition for the formation of the district, the auditor shall likewise examine the signatures thereof and certify the sufficiency or insufficiency thereof to the board of county commissioners with the petition. No person having signed such petition or such protest shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. If such petition shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same together with his certificate of sufficiency attached thereto, to the board of county commissioners and likewise if said protest shall be found to

contain a sufficient number of signatures, shall transmit the same together with his certificate of sufficiency to said board, and the board of county commissioners shall at their first meeting thereafter if such petition so requires, by resolution call a special election to be held not less than sixty days from the date of such certificate and shall cause to be published a notice of such election at least once a week for four consecutive weeks in a newspaper of general circulation in the county in which said proposed water district is located, which notice shall state the hours during which such polls will be open, the boundaries of the proposed water districts exclusive of the territory excluded by reason of such protest or protests if any, and the object of such election and said notice shall also be posted for ten days in ten public places in such proposed water district. The same notice shall be given if such proposition be submitted at a general election: Provided, in submitting said proposition to the voters for their approval or rejection, said proposition shall be expressed on the ballots in the following terms:

“Water district. Yes.”

“Water district. No.”

giving in each instance the name to such district as may be decided on by the board of county commissioners.

There shall not be less than one polling place in each ward in each incorporated city or town, and one polling place in each precinct outside such cities or towns.

In case any petition shall have been filed with the county auditor of any county prior to the taking effect of this act and no election shall have been called thereon, no election shall be called until the expiration of sixty days from the time of taking effect of this act, and in case within thirty days from the taking effect of this act a protest signed by the requisite number of qualified electors of any city or town shall be filed with the county auditor, the same shall be examined and if found sufficient shall be certified to the board of county commissioners, and such cities or towns shall be excluded from the proposed district. [L. '15, p. 55, § 2. Cf. L. '13, p. 533, § 3.]

§ 11582. [9510-4.] Two or More Petitions.

Whenever two or more petitions for the formation of a water district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits, in whole or in part of any water district. [L. '13, p. 534, § 4.]

§ 11583. [9510-5.] Elections.

If at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district the board of county commissioners shall so declare in its canvass of the returns of such elections and such water district shall then be and become a municipal corporation of the state of Washington, and the name of such water dis-

trict shall be "—— Water District" (inserting the name appearing on the ballot). [L. '13, p. 535, § 5.]

§ 11584. [9510-6.] Commissioners—Election of.

At the same election, at which the proposition is submitted to the voters as to whether a water district shall be formed, three water commissioners shall be elected to hold office respectively for the terms, one, two, and three years and until their respective successors are elected, the term of each nominee for water commissioner to be expressed on the ballot. And thereafter and at least thirty days prior to the first Tuesday of June in each year such board of water commissioners shall give notice by publication at least once a week for four consecutive weeks in a newspaper of general circulation in said water district that an election will be held on the first Tuesday in June thereafter for a water commissioner to hold office for three years and until his successor is elected and qualified.

Nominations for water commissioners shall be by petition of at least ten per cent of the qualified electors of such water district to be filed in the office of the county auditor of the county in which such district is located for the first election and with the secretary of such water district for all succeeding elections such nominations to be filed at least ten days prior to such election: Provided, however, that there shall be no election held on the first Tuesday of June immediately following the creation of such water district: And provided, further, that in the event of a vacancy caused by death, resignation or otherwise, such vacancy shall be filled by appointment by a majority vote of the remaining board of water commissioners until the next regular election for water commissioner. Said board of water commissioners shall designate in their notice of election whether such election be a general or special election, the time of opening and closing of polls, and the place of voting, but in no event shall there be less than one voting place in each of the wards of any city or town in such district, and at least one voting place in any precinct in the water district outside of any town or city. The polls shall be open at every election held by said water district at least from 1 o'clock P. M. to 8 P. M., but said board of water commissioners may keep the polls open for a longer period of time if they shall so order, but the time of opening and closing the polls must be stated in the notice of election and the polls shall be opened and closed in accordance with such notice. Any person residing in said water district who is at the time of holding of any election, a qualified voter under the laws of the state of Washington, shall be entitled to vote at any election held in such water district.

The officers of any city or town, or in any precinct in a water district where registration is required, having charge of the registration, shall deliver the same to the water commissioners for the use of the election officers at any election held in a water district formed under and in accordance with the provisions of this act. And the registration of voters for election to be held in such water district shall be conducted by the city or town clerks and officer of registration of the city, town and territory embraced within said water district; and the notice prescribed to be

given by section 5123 of this code, shall constitute sufficient notice to citizens residing in within said water district for registration for any general or special election therein, without the necessity for such notice specially stating that it is for registration for an election to be held in a water district. And any elector who shall have registered in accordance with the laws of this state, entitling him to vote at a general or special election in the city, town or territory comprised within such water district, within time to constitute same a good registration for any general or special election of said water district, shall be entitled to vote thereat without further or other registration. The clerk of such water district shall give notice of the closing of the poll-books for registration for any general or special election of such water district by a notice published at least ten days preceding such closing, such published notice to have at least two insertions in a newspaper of general circulation in such water district. And such poll-books shall be closed for the purpose of registration of voters for any general or special water district election five days preceding such election and such published notice shall so declare: Provided, however, that such poll-books shall not thereby be deemed closed for a general, county or city municipal elections, but closed only for general or special water district elections. The city or town clerk or registration officer required to perform the duties enumerated under this act shall receive no additional compensation therefor. The general laws of the state of Washington governing the registration of voters for a general or a special city or town municipal elections, when not inconsistent with the foregoing provision, shall govern the registration of voters for elections held under this chapter, and the registration books of the city, town and territory comprising said water district shall be the books used by said water district, and no separate registration books shall be kept or maintained by it. The manner of holding any general or special election for said water district shall be in accordance with the laws of this state and the charter provisions of the cities or towns within said water district if any there be, in so far as the same are not inconsistent with the provisions of this act. All expense of elections for the formation of such water districts shall be paid by the county in which said election is held and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the water district if formed. [L. '13, p. 535, § 6.]

§ 11585. [9510-7.] Board of Water Commissioners—Officers.

When the said water district shall be created as hereinbefore provided for, the officers of such district shall be a board of water commissioners consisting of three members elected as provided in section 11584 and said board of water commissioners shall annually elect one of their number as president and another of their number as secretary of said board. All water commissioners shall serve without compensation. They shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book or books kept for such purpose which shall be public records. [L. '13, p. 538, § 7.]

§ 11586. [9510-8.] Board of Water Commissioners—Powers and Duties.

All water districts organized under the provisions of this act shall be and are hereby authorized to acquire by purchase or condemnation, or both, all lands, property, property rights, water, water rights, leases or easements necessary for the purposes of the water district and to exercise the right of eminent domain in the acquirement or damaging of all land, property, property rights, water or water rights, leases and easements necessary in carrying out the purposes for which said district shall have been created and such right of eminent domain shall be exercised in the same manner and by the same procedure as is or may be provided by law for cities of the third class, except in so far as such law may be inconsistent with the provisions of this act, and except that all assessment or reassessment rolls provided by law to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the water district, and the duties devolving upon the city treasurer under said law be, and the same are hereby imposed upon the county treasurer for the purposes of this act; to construct, condemn and purchase, purchase, acquire, add to, maintain and supply waterworks for the purpose of furnishing such water district and inhabitants thereof, and any city or town within such district, and any other persons with an ample supply of water for all uses and purposes public and private, except irrigation, with full authority to regulate and control the use, distribution and price thereof. And for the purposes aforesaid, it shall be lawful for any water district so organized in this state to take, condemn and purchase, purchase, acquire and retain water from any public or navigable lake, river or watercourse, percolating or subterranean or any underflowing water within the state and, by means of aqueducts or pipe-line to conduct the same throughout such water district, and throughout any city or town within such district and to construct and lay the same along and upon public highways, roads and streets, within such district, and to condemn and purchase, purchase or acquire, lands and rights of way necessary for said aqueducts, and pipe-lines, and such water district is hereby authorized and empowered to erect and build dams or other works across or at the outlet of any lake, river or other watercourse therein up to and above high-water mark, and for all the purpose of constructing or laying such aqueducts or pipe-lines, dams or waterworks or other necessary structures in storing and retaining water as above provided, or for any of the purposes provided for by this chapter, such water district shall have the right to occupy the beds and shores up to the high-water mark of any such lake, river, or other watercourse, and to acquire the right by purchase or by condemnation and purchase or otherwise to any water, water rights, easements or privileges named in this chapter or necessary for any of said purpose and any such water district, shall have the right to acquire by purchase or condemnation and purchase any lands, properties or privileges necessary to be had to protect the water supply of such water district from pollution: Provided, that should private property be necessary for any such purposes or for storing water above high-water mark, such water district may condemn and purchase or purchase and acquire such private property. [L. '13, p. 538, § 8.]

§ 11587. [9510-9.] Local Improvement Districts.

Said water district shall have the power to establish local improvement districts within its territory; to levy special assessments under the mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement on the basis of special benefits to pay in whole or in part the damages or costs of any improvements ordered in such water district; to issue local improvement bonds in any such improvement district to be repaid by the collection of local improvement assessments: Provided, that the levying and collection of all public assessments and issuance of bonds hereby authorized shall be in the manner now and hereafter provided by law for the levying and collection of local improvement assessments and the issuance of local improvement bonds by cities of the third class in so far as the same shall not be inconsistent with the provisions of this act: Provided, however, that the duties devolving upon the city treasurer under said laws be and the same hereby are imposed upon the county treasurer for the purposes of this act, the mode of assessment shall be in the manner to be determined by the tax commissioner by resolution. [L. '13, p. 540, § 9.]

§ 11588. [9510-10.] Adoption of Plan—Submission—Election—Notice.

It shall be the duty of the water district commissioners of every water district before creating any improvements hereunder or submitting to vote any plan for incurring any indebtedness, to consider and determine upon and adopt a comprehensive scheme or plan of water supply for such district for the purposes authorized in this act, and for such purpose, the water district commissioners shall investigate the several portions and sections of such water district for the purpose of determining the present and future needs of such district in regard to a water supply; to examine and investigate, determine and select a water supply or water supplies for such district suitable and adequate for present and future needs thereof; to consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters and water rights and easements necessary therefor, and for retaining and storing any such waters, erecting dams, reservoirs, aqueducts and pipe-lines to convey the same throughout such district; for determining the plan or system for distributing such water throughout such district by means of subsidiary aqueducts and pipe-lines, and the method of distributing the cost and expense thereof against such water district and against local improvement districts within such water district for any purpose authorized in this act, and including any such local improvement district lying wholly or partially within the limits of any city or town in such district.

Such general comprehensive scheme and plan, when finally considered or determined upon by such board of water commissioners, shall be by them adopted by resolution, which resolution shall provide for the submission thereof at a general or special election specified in such resolution to the qualified voters within such district for their ratification or rejection. No expenditure for the carrying on of any part of such plan shall

be made by the water district commissioners other than the necessary salaries of engineers, clerical and office expenses of such water district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of improvements in such water district unless and until such general scheme of improvements has been so officially adopted by the water district commissioners and ratified by the affirmative vote of a majority of the voters of such water district voting thereon at the election which shall be held for such purpose. Twenty days' notice of such election shall be published in one or more weekly newspapers of general circulation in such water district. If at such election a majority of the votes cast upon such question shall be in favor of the adoption thereof, the same shall thereupon be ratified and adopted and proclamation thereof made by such commission within ten days after such election. Such commission may submit at the same election at which the proposition to adopt the comprehensive plan or scheme is submitted, or at any general or special election a proposition that said water district incur a general indebtedness for the construction of any part or all of said comprehensive plan. Provided, however, that such proposition to incur indebtedness shall be so submitted as to enable the voters to vote for or against the same independent of any vote on the proposition of adopting or rejecting such comprehensive plan or scheme. If such general indebtedness is to be incurred, the amount of such indebtedness and the terms thereof shall be included in the proposition submitted to the qualified voters as aforesaid and such proposition shall be adopted and assented to by three-fifths of the qualified voters of the said water district voting at said election.

Whenever a proposition has been adopted as aforesaid, the water district commissioners shall have power to proceed forthwith to carry out said general scheme or plan to the extent specified in the proposition to incur such general indebtedness. [L. '13, p. 540, § 10.]

§ 11589. [9510-11.] Issuance of Bonds.

Whenever the qualified voters of any such water district shall have heretofore adopted or shall hereafter adopt a proposition for a water supply, as set out in the preceding section, and shall have authorized a general indebtedness for all of said proposition or any part thereof, general water district bonds may be issued as hereinafter provided. Said bonds shall be registered or coupon bonds; shall be issued in denominations of not less than one hundred or more [than] one thousand dollars; shall be numbered from one up consecutively; shall bear the date of their issue; shall be payable not more than forty years from date; and shall bear interest not to exceed six per cent per annum, payable semi-annually, with interest coupons attached; and the principal and interest shall be made payable at such place as may be designated. The bonds and each coupon shall be signed by the presiding officer of the board of water district commissioners and shall be attested by the secretary of the said board under the seal of the water district. There shall be levied each year a tax upon the taxable property within such water district, sufficient to pay the interest on said bonds as the same accrues: Provided, however, that no levy

shall be made for such purposes, if the revenues from the sale of water or power is sufficient to pay said interest; before ten years prior to the maturity of said bonds an annual sinking fund sufficient for the payment of said bonds at maturity may be established by the levy of a tax; all taxes shall become due and collectable as other taxes. Said bonds shall be printed and engraved or lithographed on good bond paper and a duly authenticated copy of this act, and a copy of the resolution of the water district commission directing the submission of such plan or system to the qualified voters of such water district for ratification or rejection shall be printed on each bond, together with a printed copy of a signed statement by the presiding officer of the board of water commissioners and the secretary of such board, showing the result of said election. Such bonds shall be sold in such manner as the corporate authorities shall deem for the best interest of the water district. A register shall be kept of all bonds which register shall show the number, date, amount, interest, to whom delivered—if coupon bonds—and the name of the payee—if registered bonds; and when and where payable and each and every bond executed, issued or sold under the provisions of this subdivision. [L. '13, p. 542, § 11.]

§ 11590. [9510-12.] Improvements on Local Assessment Plan.

Whenever a petition signed by a majority of the owners of land in the district to be therein described shall be filed with the water district commission, asking that any portion of the general plan adopted be ordered, and defining the boundaries of a local improvement district to be created to pay in whole or in part to pay the cost thereof, it shall be the duty of the water district commission to fix a date for hearing on such petition after which it may alter the boundaries of such proposed district and prepare and adopt detailed plans of any such local improvement, declare the estimated cost thereof, what proportion of such cost shall be borne by such proposed local improvement district and what proportion of the cost, if any, shall be borne by the entire water district: Provided, however, that engineering and office expenses in all cases shall be borne by the general water district.

The water district commission shall forthwith by resolution order such improvement, provide the general funds of the water district to be applied thereto, acquire all necessary lands therefor, pay all damages caused thereby and commence in the name of the water district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle said water district to proceed with such work, and said water district commission shall thereafter proceed with such work and shall make and file with the county treasurer, its roll levying special assessments in the amount to be paid by special assessment against the property situated within such local improvement district in proportion to the special benefits to be derived by the property in such local improvement district from such improvement. Before the approval of such roll a notice shall be published once a week for four consecutive weeks in a newspaper of general circulation in such local improvement district, stating that such

roll is on file and open to inspection in the office of the clerk of the water district commission, and fixing the time not less than fifteen nor more than thirty days from the date of the first publication of such notice within which protests must be filed with the secretary of said water district commission against any assessments shown thereon and fixing a time when a hearing shall be held by said commission on said protests. After such hearing the water district commission may alter any and all assessments shown on such roll and may then by resolution approve the same, but in the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the water district commission: Provided, that whenever any property shall have been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto shall be considered by the water district commission or by any court on appeal unless such objection be made in writing at, or prior to the date fixed for the original hearing upon such roll. [L. '13, p. 543, § 12.]

§ 11591. [9510-13.] Method of Appeal.

The decision of the water district commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said water district commission and with the clerk of the superior court in the county in which such water district is situated within ten days after the resolution confirming such assessment-roll shall have become published, and such notice shall describe the property and set forth the objections of such appellant to such assessment; and within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment-roll and his objections thereto, together with the resolution confirming such assessment-roll and the record of the water district commission with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such secretary of said water district commission and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the water district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three (3) days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the head of the legal department of such water district, and to the city clerk, that such

transcript is filed. Said notice shall state a time (not less than three (3) days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such water district and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment-roll, and he shall modify and correct such assessment-roll in accordance with such decision. An appeal shall lie to the supreme court from the judgment of the superior court, as in other cases: Provided, however, that such appeal must be taken within fifteen (15) days after the date of the entry of the judgment of such superior court; and the record and opening brief of the appellant in said cause shall be filed in the supreme court within sixty (60) days after the appeal shall have been taken by notice as provided in this act. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. And the supreme court, on such appeal may correct, change, modify, confirm or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the order of the supreme court upon such appeal shall be filed with the officer having custody of such assessment-roll, who shall thereupon modify and correct such assessment-roll in accordance with such decision. [L. '13, p. 545, § 13.]

§ 11592. [9510-14.] Proceedings Conclusive.

Whenever any assessment-roll for local improvements shall have been confirmed by the water district commission of such water district as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the water district commission upon such assessment-roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this act, and not appealing from the action of the water district commission in confirming such assessment-roll in the manner and within the time in this act provided. No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: Provided, that this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (1) that the property about to be sold does not appear upon the assessment-roll, or (2) that said assessment had been paid. [L. '13, p. 547, § 14.]

§ 11593. [9510-15.] Annexation of Territory—Petition for Election for.

The territory adjoining and in the same county with any water district organized under this chapter may be annexed to and become a part of such water district in the manner following: Any twenty-five (25) legal voters, residents within the territory proposed to be annexed, may petition the said water district commission of such water district to cause the question to be submitted to the legal voters of the territory proposed to be annexed whether they will be annexed and become a part of such adjoining water district: Provided, however, that where such territory to be annexed shall be within the limits of an incorporated city or town other than the first class, such petition shall be signed by at least twenty (20) per cent of the qualified electors residing within such territory. The petition shall define the limits of the territory proposed to be annexed to such water district. Upon the filing of such petition with the board of water commissioners, if said commissioners shall concur in said petition, they shall provide for a hearing to be held for the discussion of such proposed annexation at the office of said board of water commissioners, and shall give due notice of such hearing by publication in a weekly newspaper published in said water district for at least two weeks prior to said hearing. If said water commissioners shall concur in said petition, it shall be their duty to submit the proposal to the electors of such territory proposed to be annexed, at an election to be held in such territory. The said commissioners shall, by order of such board duly adopted, fix a time and place or places within the limits of the territory proposed to be annexed for the holding of such election to determine the question of annexation, and said commissioners shall name the persons to act as judges at such election, and shall give notice thereof by causing notice to be published for two weeks in two consecutive issues of a weekly newspaper published in said water district, and by posting notices in five (5) public places within the territory proposed to be annexed to said district. The ballot to be used at such election shall be in the following form:

“For annexation to water district.”

“Against annexation to water district.”

The judge or judges at such election shall make return thereof to the board of water commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon the question at such election shall be for annexation, then such territory shall immediately be and become annexed to such water district, and the same shall thenceforth be a part of said water district, the same as though originally included in such district. [L. '13, p. 547, § 15.]

§ 11594. [9510-16.] Election—Officers—Expenses.

All election officers for any election held pursuant to this chapter shall be named by the board of water commissioners and the expense of all such elections shall be paid out of the funds of such water district. [L. '13, p. 549, § 16.]

§ 11595. [9510-17.] Tax Levy—Limit of—Collection.

The board of water commissioners are hereby authorized to levy, or cause to be levied, to carry out the purposes of this act in addition to that mentioned in section 11589, a general tax on all property located in said water district each year not to exceed two mills on the assessed valuation of the property in such water district. Said taxes when so levied shall be certified to the proper county official for the collection of the same as other general taxes. When such money is collected it shall be placed in a separate fund to be known as the — Water District Fund and paid out on warrants issued on the board of water commissioners for the purposes specified in this act. [L. '13, p. 549, § 17.]

§ 11596. [9510-18.] Limit of Indebtedness.

Each and every water district that may hereafter be organized pursuant to this act is hereby authorized and empowered by and through its board of water commissioners to contract indebtedness for water purposes, and the maintenance thereof not exceeding one per cent of the taxable property in such water district to be ascertained by the last assessment for state and county purposes previous to and the incurring of such indebtedness. [L. '13, p. 549, § 18.]

§ 11597. [9510-19.] Additional Indebtedness—Election to Authorize.

Each and every water district hereafter to be organized pursuant to this act, may contract indebtedness in excess of the amount named in the preceding section, but not exceeding in amount, together with existing indebtedness, five (5) per centum of the taxable property in said district, to be ascertained as provided in the preceding section, whenever three-fifths ($\frac{3}{5}$) of the voters voting at said election in such water district assent thereto, at an election to be held in said water district in the manner provided by this act, which election may either be a special or a general election, and the board of water commissioners are hereby authorized and empowered to submit the question of incurring such indebtedness, and issuing negotiable bonds of such water district to the qualified voters of such water district at any time they may so order: Provided, that all bonds so to be issued shall be subject to the provisions regarding bonds as set out in section 11589. [L. '13, p. 549, § 19.]

§ 11598. [9510-20.] Contracts.

The board of water commissioners shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide. All materials purchased and work ordered, the estimated cost of which is in excess of one thousand dollars shall be let by contract [; but] before awarding any such contract the board of water commissioners shall cause to be published in some newspaper published within the district a notice for at least ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for pro-

posals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein. Each bid shall be accompanied by a certified check payable to the order of the board of water commissioners for a sum not less than five per cent of the amount of the bid and no bid shall be considered unless accompanied by such check. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting his own plans and specifications: Provided, however, that no contract shall be let in excess of the cost of said materials or work, or if in the opinion of the board of water commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks shall be returned to the bidders; but if such contract be let, then and in such case all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check and the amount thereof shall be forfeited to the water district. [L. '13, p. 550, § 20.]

§ 11599. [9510-21.] Interest Coupon—Payment of.

The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered in all purposes as warrants drawn upon the general fund of the said water district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such water district at maturity, or thereafter, and when so presented, if there are not funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which it was attached. [L. '13, p. 551, § 21.]

§ 11600. [9510-22.] County Treasurer—Funds.

The county treasurer shall create a fund to be known as the "____ Water District Fund," into which shall be paid all money received by him from the collection of taxes in behalf of such water district, and no money shall be disbursed therefrom except upon warrants of the county auditor as in this act provided. The county treasurer shall also maintain such other special funds as may be prescribed by the water district, into which shall be placed such moneys as the board of water commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of water commissioners. [L. '13, p. 551, § 22.]

§ 11601. [9510-23.] Cumulative.

This act shall not be construed to repeal, amend, or modify any law heretofore enacted providing a method for water supply for any city or town in this state, but shall be held to be an additional and concurrent method providing for such purpose. [L. '13, p. 552, § 23.]

§ 11602. Disincorporation.

Any water district organized under sections 11579 and 11601 inclusive, of this Code, may be disincorporated in the same manner (in so far as the same is applicable) as is provided in section 8914 to 8931 inclusive, of this Code, for the disincorporation of the third and fourth class cities, except that the petition for disincorporation shall be signed by not less than twenty-five per cent (25%) of the voters in the water district. [L. '17, p. 598, § 1.]

Water Code. See §§ 7351—7402.

Water Rights. See “Irrigation and Water Rights.”

Water Supply. Protection of, see “Municipal Corporations,” § 9473.

Waters. See “Irrigation and Water Rights”; “Navigation,” § 9593.

Waterways. See “Navigation,” § 9593.

Ways of Necessity. See “Highways,” § 6746.

Weeds. See “Agriculture,” § 2756.

TITLE LXXXV.

WEIGHTS AND MEASURES.

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| 11608. City sealers in cities of over fifty thousand—Powers and duties. | 11621. Hops, fixing tare, weight of bales, etc. |
| 11609. Penalties. | 11622. Capacity officially stamped on milk cans. |
| 11610. Special policemen. | 11623. Penalty for use of unstamped cans. |
| 11611. Obstructing officers—Penalty. | 11624. Fees for stamping. |
| 11612. Specified standards. | 11625. Standard size—Apple and pear boxes. |
| 11613. Effect on powers of public service commission. | 11626. Same—Measurements. |
| 11614. Cranberry sales—Standard containers. | 11627. Coal—Weight of gross and net ton. |
| 11615. Marking less than standard packages at wholesale. | 11628. Penalty for short weight. |

§ 11603. [9511-1.] National and State Standards.

The weights and measures, received from the United States under a resolution of congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the National Bureau of Standards, shall be the state standards, by which all county and municipal standards of weights and measures shall be tried, approved and sealed.

All weights, measures, scales, scale-beams, patent balances, steelyards, automatic or computing scales, or other instruments for weighing or measuring, by which any merchandise, commodity, or thing is bought or sold by weight or measure, or offered or exposed for sale, shall conform to the state standards herein prescribed.

Any weight, measure, scale, scale-beam, patent balance, steelyard, automatic or computing scale or other instrument or device for weighing or measuring which does not conform to such state standards is hereby declared to be a false weight or measure. [L. '13, p. 144, § 1.]

Power to Regulate: See Remington's Digest, Weights, § 1; Seattle v. Goldsmith, 73 Wash. 54, 131 Pac. 456; Spokane v. Arnold, 73 Wash. 256, 131 Pac. 815.

Conformity to Standards and Regulations in General: See Remington's Digest, Weights, § 2; Spokane v. Arnold, 73 Wash. 256, 131 Pac. 815; Seattle v. Yocum, 94 Wash. 194, 162 Pac. 56.

Validity of legislation for prevention of fraud in weights and measures. Ann. Cas. 1912C, 251; Ann. Cas. 1914C, 679; Ann. Cas. 1915D, 1073; Ann. Cas. 1917E, 877; Ann. Cas. 1918D, 156.

Power to prescribe the manner or method of determining quantity or amount of commodity. L. R. A. 1916E, 379.

§ 11604. Jurisdiction Over Weighing Devices of Common Carriers.

The secretary of state as ex-officio superintendent of weights and measures, shall have the power and it shall be his duty to exercise all the powers and perform all the duties now vested in and required to be performed by the public service commission with respect to weighing devices used by common carriers other than track scales, and such scales and devices shall be subject to the rules and regulations promulgated by the superintendent of weights and measures. [L. '17, p. 325, § 1.]

See supra, § 10852, duties devolve upon director of agriculture.

See supra, § 10893, superintendent and department of weights and measures abolished.

§ 11605. [9511-2.*] Department of Weights and Measures—Officers and Duties.

There is hereby created a department of weights and measures in and for the state of Washington. The secretary of state shall be ex-officio superintendent of weights and measures and the head of the department herein created. He shall appoint a deputy superintendent of weights and measures and one inspector whose terms of office shall expire with that of the superintendent. The deputy shall receive a salary of twenty-four hundred dollars per annum, and the inspector shall receive a salary of fifteen hundred dollars per annum. He shall also appoint as many persons as he shall deem necessary, not to exceed twelve in number, as local inspectors, who shall be known as state sealers and who shall receive a compensation to be determined by the superintendent, and shall be removable at will by him: Provided, further, that the total expenditures for this department shall not exceed \$35,000 for any biennium. There shall be allowed for maintenance of the department of weights and measures such sums as shall be appropriated by the legislature. The superintendent shall take charge of the state standards, cause them to be kept in a safe and suitable place in the office of the superintendent, from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safekeeping. He shall maintain the state standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall at least once in five years try and prove by the state standards all weights, measures and other apparatus which may belong to any county or city, and shall seal such when found to be accurate, by stamping on them with seals which he shall have and keep for that purpose, the letter "W" and the last two figures of the year in which the same are sealed. He shall have and keep a general supervision of the weights, measures and weighing and measuring devices offered for sale, sold or in use in the state. He shall, upon the written request of any citizen, firm, corporation or educational institution in the state, test or calibrate weights, measures, weighing or measuring devices and instruments or apparatus used as standards in this state. He, or his deputy, or his inspectors, by his direction, shall, at least once annually, test all scales, weights and measures used in checking the receipts or disbursements of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, and he shall report in writing his findings to

the supervising board and to the executive officer of the institution concerned, and at the request of such board or executive officer, the superintendent of weights and measures shall appoint in writing one or more employees, then in the actual service of each institution, who shall act as special deputies for the purpose of checking the receipts or disbursements of supplies. He shall keep a complete record of the standards, balances and other apparatus belonging to the state and take receipt for same from his successor in office. He shall annually, on the first day of October make to the governor a report of the work done by his office. The state superintendent, or his deputy, or inspectors at his direction, shall inspect all standards and apparatus used by the state sealers and cities of the first class, having a population of more than fifty thousand people at least once in two years, and shall keep a record of the same. He or his deputy or inspectors, at his direction, shall at least once in two years visit the various cities and counties in the state, in order to inspect the work of the local sealers, and in the performance of such duties he may inspect the weights, measures, balances or any other weighing or measuring appliances of any citizen, firm or corporation, shall have the same powers as the local sealer of weights and measures. The superintendent shall issue from time to time, regulations for the guidance of state and city sealers, and the said regulations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties. The deputy state superintendent of weights and measures shall forthwith, on his appointment, give a bond in the penal sum of \$5,000 with sureties to be approved by the governor for the faithful performance of the duties of his office, and for the safety of the standards entrusted to his care, and for the surrender thereof immediately to his successor in office or to the person appointed by the governor to receive them. [L. '17, p. 489, § 1; L. '13, p. 145, § 2.]

See notes to § 11604.

§ 11606. [9511-3.*] County and City Standards.

The superintendent of weights and measures, and the common council or city commission of each city having a population of more than fifty thousand people shall procure at the expense of the state or city, and shall keep at all times a complete set of weights and measures and other apparatus, of such materials and construction as the said superintendent of weights and measures may direct. All such weights, measures and other apparatus having been tried and accurately proven by him, shall be sealed and certified to by the state superintendent as hereinbefore provided; and shall then be deposited with and preserved by the city sealer as public standards for such city, and by the state sealer for use as public standards in any county in the state.

Whenever the common council or city commission of any such city shall neglect for six months so to do, the city clerk or comptroller of said city, on notification and request by the superintendent of weights and measures, shall provide such standards and cause the same to be tried, proved, sealed and deposited at the expense of such city. [L. '17, p. 491, § 2; L. '13, p. 147, § 3.]

See notes to § 11604.

§ 11607. [9511-4.*] Powers of State Sealer.

Where not otherwise provided by law the state sealer shall have the power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical device for measurements and tools, appliances or accessories connected with any or all of such instruments or measures kept for the purpose of sale, sold or used or employed within any county in the state by any proprietor, agent, lessee or employee in proving the size, quantity or extent, area or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award; and he shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the amount represented, and whether they are being offered for sale or sold in a manner in accordance with law. He may for the purpose above mentioned, and in the general performance of his official duties, enter and go into or upon, and without formal warrant, any stand, place, building or premises, or stop any vendor, peddler, junk dealer, coal wagon, wood wagon, ice wagon, delivery wagon or any dealer whatsoever, and require him, if necessary, to proceed to some place which the sealer may specify, for the purpose of making the proper tests. Whenever the state sealer finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. Whenever the sealer compares weights, measures or weighing or measuring instruments, and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal or mark such weights, measures or weighing or measuring instruments with appropriate devices to be approved by the state superintendent of weights and measures. He shall condemn and seize and may destroy incorrect weights, measures or weighing or measuring instruments which cannot be repaired; and such as are incorrect and yet may be repaired, he shall mark or tag as "condemned for repairs"—in a manner prescribed by the state superintendent of weights and measures. The owner or users of any weights, measures or weighing or measuring instruments of which such disposition is made, shall have the same repaired or corrected within ten days and they may neither use nor dispose of the same in any way, but shall hold the same at the disposal of the sealer: Provided, that state sealers may, by direction of the secretary of state, perform the duties and exercise the powers of deputies appointed by the secretary of state, pursuant to the provisions of chapter 142, Laws of 1915, and acts amendatory thereto: Provided further, that deputies appointed by the secretary of state pursuant to the provisions of chapter 142, Laws of 1915, and acts amendatory thereto, may, by direction of the secretary of state, perform the duties and exercise the powers of [the secretary of] state sealers as hereinbefore set forth. [L. '17, p. 492, § 3; L. '13, p. 147, § 4.]

See notes to § 11604.

See supra, § 10852, duties of state sealers devolve upon director of agriculture.

See supra, § 10893, state sealers abolished.

"Chapter 142" refers to the motor vehicle law of 1915 appointing automobile inspectors, which has been repealed.

§ 11608. [9511-5.*] City Sealers in Cities of Over Fifty Thousand—Powers and Duties.

There shall be a city sealer of weights and measures in cities of the first class having a population of more than fifty thousand people, to be appointed by the mayor from a list to be furnished by the civil service board, and under the rules of said board, where such board exists; otherwise he shall be appointed by the mayor by and with the advice and consent of the common council or city commission. He shall perform in said city the duties and have like powers as a state sealer: Provided, however, that in every case where any city of the first class has heretofore made, or may hereafter make provision by charter or ordinance for the enforcement of proper legal weights and measures vesting general supervision and direction in any official at the head of any department of such city, such official for the purpose of this act, shall be ex-officio sealer of weights and measures in such city, and he and his subordinate or subordinates, shall have the duties and powers of city sealers of weights and measures, and the powers of such cities relative to weights and measures shall be additional to the powers granted such city by law or charter: And provided further, that the state sealer shall exercise no powers and discharge no duties in any city of the first class having its own sealer of weights and measures. [L. '17, p. 494, § 4; L. '13, p. 150, § 5.]

See notes to §§ 11604, 11607.

§ 11609. [9511-6.] Penalties.

Any person, who, by himself or his servant or agent or as the servant or agent of another, shall use or retain in his possession a false weight or measure or weighing or measuring device, or any weight or measuring device which has not been sealed by a sealer of weights and measures within one year, in the buying or selling of any commodity, or thing; or who shall dispose of any condemned weight, measure or weighing or measuring device contrary to law, or remove any tag placed thereon by the sealer; or any person who, by himself or by his servant or agent, or as the servant or agent of another, shall sell or offer or expose for sale less than the quantity he represents; or sell or offer or expose for sale any such commodities in a manner contrary to law; or any person who by himself or by his servant or agent or as the servant or agent of another shall sell or offer for sale, or have in his possession for the purpose of selling any device or instrument to be used to or calculated to falsify any weight or measure, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty (20) dollars nor more than two hundred (200) dollars, or by imprisonment in the county jail not more than three months, or both such fine and imprisonment upon a first conviction, but upon a second conviction he shall be punished by a fine of not less than fifty (50) dollars, nor more than five hundred (500) dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [L. '13, p. 150, § 6.]

§ 11610. [9511-7.] Special Policemen.

The superintendent of weights and measures, his deputy and inspectors, and the county and city sealer of weights and measures, are hereby made special policemen, and are authorized and empowered to arrest, without formal warrant, any violator of the statutes in relation to weights and measures, and to seize, for use as evidence, and without formal warrant, any false weight, measure or weighing or measuring device or packages or amounts of commodities found to be used, retained or offered or exposed for sale or sold in violation of law. [L. '13, p. 151, § 7.]

§ 11611. [9511-8.] Obstructing Officers—Penalty.

Any person who shall hinder or obstruct, in any way, the superintendent of weights and measures, his deputy or inspectors, or any county or city sealer, in the performance of his official duties, shall be guilty of a misdemeanor, and shall be punished upon conviction thereof, in any court of competent jurisdiction by a fine of not less than twenty (20) nor more than two hundred (\$200) dollars or by imprisonment in the county jail for not more than ninety days or by both such fine and imprisonment. [L. '13, p. 151, § 8.]

§ 11612. [9511-9.] Specified Standards.

A standard package or container of butter in the state of Washington shall contain sixteen (16) ounces net weight or thirty-two (32) ounces net weight, and a standard package or container need have no statement of the net weight of its contents.

Whenever butter is sold or offered for sale in a package or container the net weight of which is more or less than the standards herein prescribed, such package or container shall be labeled in plain English words or figures with the correct net weight of its contents expressed in pounds and ounces together with the name of the manufacturer or jobber.

A standard loaf of bread in the state of Washington shall contain sixteen (16) ounces net weight or thirty-two (32) ounces net weight, and no bread shall be sold within the state except it be a whole, half or quarter loaf, containing thirty-two (32) ounces, sixteen (16) ounces, or eight (8) ounces net weight, unless the same be labeled in plain English words or figures with its correct net weight expressed in pounds and ounces together with the name and address of the manufacturer.

This section shall not apply to rolls or to fancy bread weighing less than four (4) ounces nor to stale bread sold in quantity.

A standard sack of potatoes in the state of Washington shall contain one hundred (100) pounds net weight, and a standard sack of potatoes need have no statement of the weight of its contents.

Whenever potatoes are sold by the sack, in sacks containing more or less than the standard, such sack shall be labeled in plain English words or figures with its true net weight.

All sales of blackberries, currants, strawberries, raspberries, cranberries, blueberries, gooseberries, cherries and similar berries in pack-

ages containing less than one bushel, shall be sold by the dry quart containing 67.2 cubic inches or the dry pint containing 33.6 cubic inches, and all berry boxes sold, used or offered for sale within the state shall be of the interior capacity of 67.2 or 33.6 cubic inches, unless the same be labeled in plain English words or figures with its correct interior capacity expressed thereon in cubic inches.

Nothing in the above section shall be so construed as to prevent the sale of any of the articles therein mentioned by weight.

A standard sack of coal in the state of Washington shall contain one hundred (100) pounds net weight and a standard sack of coal need have no statement of the net weight of its contents.

Whenever coal is sold or offered for sale by the sack, in sacks containing more or less than one hundred (100) pounds net weight, such sack shall be labeled in plain English words or figures with the true net weight of its contents expressed in pounds.

It shall be unlawful for any person, firm or corporation or their agents, servants or other employees to misrepresent any coal offered for sale or to sell coal of any particular name or designation, or from any particular mine under the name or designation of another coal or mine.

All milk, cream or buttermilk sold in the state of Washington, in bottles shall be sold only in bottles containing one-half pint, one pint, one quart, one-half gallon or one gallon standard liquid measure.

All vinegar sold, exposed or offered for sale in the state of Washington, in bottles, shall be sold in bottles containing one-half pint, one pint, one quart, one-half gallon or one gallon standard liquid measure and when so sold need have no statement of the net measure of its contents.

Whenever vinegar is sold in the state of Washington in bottles containing more or less than mentioned in the foregoing section, such bottles shall be labeled in plain English words and figures with its true net measure.

It shall be unlawful for any person, firm or corporation in the state of Washington to buy any commodity upon the basis of weight or measure except the same be bought upon the basis of the true net weight or measure, and unless the scales or measures so used shall bear the seal of a sealer of weights and measures and conform to the standards adopted by the state of Washington.

Every vendor of ice in the state of Washington shall at the time of actual delivery of any ice sold, weigh the quantity of ice delivered, and for that purpose shall use a steelyard balance or other apparatus for weighing such ice, which shall have been duly adjusted and sealed by a duly appointed sealer of weights and measures in accordance with the provisions of the laws of the state of Washington, and all ice delivered to consumers within this state shall be sold by avoirdupois weight unless it is otherwise specially agreed upon between the buyer and the seller.

Each and every pair of ice tongs used in the delivery of ice within said state shall have prominently and conspicuously stamped thereon the exact and true avoirdupois weight of said tongs.

It shall be unlawful for any vendor, or his servant, agent or other employee in the state of Washington, to offer to sell, or sell and deliver any commodity ordinarily and usually sold in bulk or quantity by weight or measure, unless the same be weighed or measured as the case may be upon or by officially tested and approved weights, measures, scales, scale-beams, patent balances, steelyards, automatic or computing scales or other instruments for weighing or measuring, and unless that portion of such commodity so offered for sale or sale by weight or measure shall be the true net weight or measure.

It shall be unlawful for any vendor of firewood in the state of Washington, or his servant, agent or other employees to sell or offer for sale the same in the state in any quantity or by any measure except by the cord or fractional part thereof. The standard measurement of a cord of firewood in this state is hereby fixed and established at one hundred twenty-eight (128) cubic feet.

It is hereby expressly provided that mill wood in twenty-four (24) inch lengths or shorter shall not be subject to the provisions of this act.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 152, § 9.]

Validity and construction of statutes regulating net weight of food packages. *Ann. Cas.* 1916B, 1169; *Ann. Cas.* 1916D, 551.

Validity of regulations as to weight of loaf of bread. 44 *L. R. A. (N. S.)* 632.

Validity of statute as to "containers." 5 *A. L. R.* 1068.

Power to require weight of package to be indicated upon it. 17 *L. R. A. (N. S.)* 684.

§ 11613. [9511-10.] Effect on Powers of Public Service Commission.

Nothing contained in this act shall be construed as withdrawing or superseding the powers and duties of the Public Service Commission of Washington with respect to track scales and other weighing devices used by common carriers, but the standards herein established shall be used in testing the track scales and weighing devices of such carrier. [L. '13, p. 155, § 10.]

§ 11614. Cranberry Sales—Standard Containers.

A standard package or container for cranberries in this state shall contain one thousand nine hundred forty-two (1,942) cubic inches and be equivalent to one-third of a United States cranberry barrel, and need have no statement of its cubical contents but shall be marked in plain letters, not less than one-quarter inch in height, "One-third United States Cranberry Barrel," or the net weight of the contents thereof. [L. '19, p. 253, § 1.]

§ 11615. Marking Less Than Standard Packages at Wholesale.

All cranberries offered for sale at wholesale in this state, in packages or containers, the cubical contents of which are less than the standard above defined, shall be marked in plain letters and figures, not less than one-quarter inch in height, with the cubical contents in inches or the net weight of the contents. [L. '19, p. 253, § 2.]

§ 11616. Cranberry Standard for Retail Sales.

Cranberries sold at retail shall be sold by dry measure quarts containing sixty-seven and two-tenths (67.2) cubic inches, or dry measure pints containing thirty-three and six-tenths (33.6) cubic inches or by weight. [L. '19, p. 253, § 3.]

§ 11617. Penalty.

Every person violating any provision of this act shall be deemed guilty of a misdemeanor. [L. '19, p. 254, § 4.]

§ 11618. [9511-11.] Berry Boxes Until January 1, 1914.

No law passed during the session of 1913 of the legislature of the state of Washington relating to the size and capacity of berry boxes shall go into effect until January 1, 1914. [L. '13, p. 201, § 1.]

§ 11619. [9524.] Measurement of Charcoal.

All baskets for measuring charcoal, in this state, shall contain two bushels, and shall be of the following dimensions, viz.: Nineteen inches in breadth in every part thereof, and seventeen and one-half inches deep, measuring from the top of the basket to the highest part of the bottom, and be well heaped: Provided, that nothing in this section shall be construed so as to prevent the use of any basket, box, or other measure in conformity with the standard of measurement as provided in this section. [L. '77, p. 333, § 1; 1 H. C., § 3147.]

§ 11620. [9525.] Penalty for Violation of Preceding Section.

Any person or persons who shall violate the provisions of the last preceding section shall be liable to a fine of five dollars for each and every offense so committed, to be collected in similar manner as other fines for similar cases are now collected, and all fines collected as aforesaid shall belong to the school fund of the county in which such offense or offenses may have been committed. [L. '77, p. 333, § 2; 1 H. C. § 3148.]

§ 11621. [9526.] Hops, Fixing Tare, Weight of Bales, etc.

The amount of tare to be deducted from the gross weight of each bale of hops grown and hereafter sold in this state is hereby fixed at five pounds per bale. Five yards of baling cloth is the maximum quantity to be used in making the bale, and the standard weight of each yard of baling cloth is hereby fixed at from twenty-four to thirty ounces. The standard weight for a bale of hops is hereby fixed at from one hundred and seventy-five to two hundred and ten pounds. Any vender of hops using heavier sacking than that specified in this section, or using any extraneous matter in the baling thereof, shall have the same deducted as additional tare. [L. '90, p. 522, § 1; 1 H. C., § 3149.]

§ 11622. [9527.] Capacity Officially Stamped on Milk Cans.

All milk cans or other vessels used for the shipping, sale or dispensing of milk shall have their liquid capacity United States standard,

measured and plainly sealed or stamped thereon by any county auditor, as ex-officio county sealer, or any of his deputies, in the manner already provided for the sealing of weights and measures. [L. '99, p. 141, § 1.]

§ 11623. [9528.] Penalty for Use of Unstamped Cans.

Any individual or corporation owning and using milk cans or other vessels or shipping, selling or dispensing of milk by measurement for a consideration in a can or vessel that has not been officially sealed and its liquid capacity plainly stamped thereon, shall be subject to a fine of five dollars for every offense, and the forfeiture of all unsealed milk cans or vessels found in his or its possession. [L. '99, p. 141, § 2.]

§ 11624. [9529.] Fees for Stamping.

Any county sealer shall charge a fee of ten cents for each milk can or vessel so stamped or sealed. [L. '99, p. 141, § 3.]

§ 11625. [9530.] Standard Size—Apple and Pear Boxes.

There is hereby created and established a standard size for apple boxes and pear boxes for the state of Washington. [L. '03, p. 49, § 1.]

§ 11626. [9531.] Same—Measurements.

The standard size of an apple box shall be eighteen inches long, eleven and one-half inches wide, ten and one-half inches deep, inside measurement. The standard size of a pear box shall be eighteen inches long, eleven and one-half inches wide, eight inches deep, inside measurement. [L. '03, p. 49, § 2.]

§ 11627. [9532.] Coal—Weight of Gross and Net Ton.

Two thousand two hundred forty pounds shall constitute a gross ton of coal, and two thousand pounds shall constitute a net ton of coal. [L. '07, p. 194, § 1.]

§ 11628. [9533.] Penalty for Short Weight.

Any person selling less than two thousand pounds for a ton shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) or imprisoned in the county jail not less than ten days nor more than six months, or fined and imprisoned both, in the discretion of the court. [L. '07, p. 194, § 2.]

Wharves. Erection of, see "Navigation," § 9613.

Lease of harbor areas for, see "Lands of State," § 7999.

Liens for wharfage charges, see §§ 1191—1196.

Wills. See §§ 1379—1416.

Witnesses. See §§ 1210—1263.

Before legislature, see "Legislature," § 8178.

In justice's court, see §§ 1898—1909.

Woman's Industrial Home. See §§ 1988—2004.

Workmen's Compensation. See "Labor Law," §§ 7673—7796.

APPENDIX.

AMENDMENTS TO STATE CONSTITUTION.

AMENDMENT 10.

ART. I, § 22. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

Approved November 7, 1922.

AMENDMENT 11.

ART. VIII, § 4. No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

Approved November 7, 1922.

APPENDIX.

RESULT OF ELECTION, NOVEMBER 7, 1922.

REFERENDUMS Nos. 12-15.

Referred Sections.

- § 4805-1. Vetoed by popular vote.
- § 5115-1. Vetoed by popular vote.
- § 5120-1. Vetoed by popular vote.
- § 5121-1. Vetoed by popular vote.
- § 5123-1. Vetoed by popular vote.
- § 5125-1. Vetoed by popular vote.
- § 5126-1. Vetoed by popular vote.
- § 5189-1. Vetoed by popular vote.
- § 5198-1. Vetoed by popular vote.
- §§ 5214 to 5224-1. Vetoed by popular vote.
- § 10412. Vetoed by popular vote.

INITIATIVE MEASURE No. 40.

SECTION 1. That Chapter 174 of 1921 Session Laws of the State of Washington entitled "An Act providing for the levy and collection of an annual poll or capitation tax, and providing penalties, and declaring that this act shall take effect immediately," be and the same is hereby repealed.

Approved, and repeals §§ 11242-11251.

REMINGTON AND BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

[The asterisk denotes that the section has been amended.]

CODES OF PROCEDURE, SECTIONS 1 TO 2721½, SAME NUMBERING.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
3000-1	2723	3082-1*	2839	3139-22	2967	3157	3052
3000-6*	2724	3082-2*	2840	3139-23	2968	3158	3053
3000-7	2725	3082-3*	2841	3139-24	2969	3159	3054
3000-8	2726	3082-4	2842	3139-25	2970	3160	3055
3000-9	2727	3082-5*	2843	3139-26	2971	3161	3056
3000-10	2728	3082-6	2844	3139-27	2972	3162	3057
3000-11	2729	3082-7*	2845	3139-28	2973	3163	3058
3000-12	2730	3082-8	2846	3139-29	2974	3164	3059
3000-13	2731	3082-9	2847	3139-30	2975	3165	3059½
3000-16*	2732	3082-10*	2848	3139-31	2976	3165-1*	3060
3000-17*	2733	3082-11	2849	3139-32	2977	3165-2*	3061
3000-18*	2734	3082-12	2850	3139-33	2978	3165-3	3062
3000-19*	2735	3082-13*	2851	3139-34	2979	3165-4*	3063
3001	2736	3082-14*	2852	3139-35	2980	3165-5*	3064
3002	2737	3082-15	2853	3139-36	2981	3165-5½	3065
3005*	2738	3082-16*	2854	3139-37	2982	3165-6	3066
3006	2739	3082-17*	2855	3139-38	2983	3165-7	3067
3007	2740	3082-18*	2856	3139-39	2984	3172-1	3068
3008	2741	3082-19	2857	3139-40	2985	3172-2	3069
3009	2742	3082-20	2858	3139-41	2986	3172-3	3070
3010	2743	3082-21	2859	3139-42	2987	3172-4	3071
3011	2744	3082-22	2860	3139-43	2988	3172-5	3072
3012-1	2745	3082-23	2861	3139-44	2989	3173	3073
3012-2	2746	3082-24	2862	3139-45	2990	3174	3074
3012-3	2747	3082-25	2863	3139-46	2991	3175	3075
3012-4	2748	3082-26	2864	3139-47	2992	3176	3076
3012-5	2749	3082-27*	2865	3139-48	2993	3177	3077
3030	2754	3082-28	2866	3139-49	2994	3178	3078
3031	2755	3082-29*	2867	3139-50	2995	3179	3079
3032	2756	3082-30*	2868	3139-51	2996	3180	3080
3033	2757	3082-31*	2869	3139-52	2997	3181	3081
3034	2758	3082-32	2870	3139-53	2998	3182	3085
3035	2759	3082-33	2871	3139-54	2999	3183	3086
3036	2760	3139-1	2946	3139-55	3000	3184	3087
3037	2761	3139-2	2947	3139-56	3001	3185	3088
3038	2762	3139-3	2948	3139-57	3002	3186	3089
3039	2763	3139-4	2949	3139-58	3003	3187	3090
3040	2764	3139-5	2950	3140	3036	3188	3091
3041	2765	3139-6	2951	3141	3037	3189	3092
3042	2766	3139-7	2952	3142	3037½	3190	3093
3042-1	2767	3139-8	2953	3143	3038	3191	3094
3042-2	2768	3139-9	2954	3144	3039	3192	3095
3043	2769	3139-10	2955	3145	3040	3193	3096
3044	2770	3139-11	2956	3146	3041	3194	3097
3045	2829	3139-12	2957	3147	3042	3195	3098
3046	2830	3139-13	2958	3148	3043	3196	3099
3047	2831	3139-14	2959	3149	3044	3197	3100
3048	2832	3139-15	2960	3150	3045	3198	3101
3049	2833	3139-16	2961	3151	3046	3199	3102
3050	2834	3139-17	2962	3152	3047	3200	3103
3051	2835	3139-18	2963	3153	3048	3201	3104
3052	2836	3139-19	2964	3154	3049	3201-1*	3110
3053	2837	3139-20	2965	3155	3050	3201-2	3111
3054	2838	3139-21	2966	3156	3051	3201-3	3112

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
3201-4	3113	3277	3195	3369-3	3589	3385-11	3657
3203	3114	3278	3196	3369-4	3590	3385-12	3658
3204*	3115	3279	3197	3369-5	3591	3385-13	3659
3205	3116	3280	3198	3369-6	3592	3385-14	3660
3206	3117	3281	3199	3369-7	3593	3385-15	3661
3207	3118	3282	3200	3369-8	3594	3385-16	3662
3208	3119	3283	3201	3369-9	3595	3385-17	3663
3209	3122	3284	3202	3369-10	3596	3385-18	3664
3210	3123	3285	3203	3369-11	3597	3385-19	3665
3211	3124	3286	3204	3369-12	3598	3385-20	3666
3211-1	3125	3287	3205	3369-13	3599	3385-21	3667
3211-2	3126	3288	3206	3369-14	3600	3385-22	3668
3212	3127	3289	3207	3369-15	3601	3385-23	3669
3214	3128	3344	3291	3369-16	3602	3385-24	3670
3215	3129	3345	3292	3369-17	3603	3385-25	3671
3216	3130	3345-1	3313	3369-18	3604	3385-26	3672
3219	3131	3345-2	3314	3369-19	3605	3385-27	3673
3220	3132	3345-3	3315	3369-20	3606	3385-28	3674
3221	3133	3345-4	3316	3369-21	3607	3385-29	3675
3222	3134	3345-5	3317	3369-22	3608	3385-30	3676
3223	3135	3345-6	3318	3369-23	3609	3385-31	3677
3224	3136	3345-7	3319	3369-24	3610	3385-32	3678
3225	3137	3345-8	3320	3369-25	3611	3385-33	3679
3226	3138	3345-9	3321	3369-26	3612	3385-34	3680
3227	3139	3345-10	3322	3369-27	3613	3385-35	3681
3228	3140	3345-12	3341	3369-28	3614	3385-36	3682
3229	3141	3345-13	3342	3369-29	3615	3385-37	3683
3230	3142	3345-14	3343	3369-30	3616	3385-38	3684
3231	3143	3345-15	3344	3369-31	3617	3385-39	3685
3232	3144	3345-16	3345	3369-32	3618	3385-40	3686
3233	3145	3345-17*	3346	3369-33	3619	3385-41	3687
3234	3146	3345-18*	3347	3369-34	3620	3385-42	3688
3235	3147	3345-19	3348	3369-35	3621	3385-43	3689
3236	3148	3345-20	3349	3369-36	3622	3385-44	3690
3237	3149	3345-21	3350	3369-37	3623	3385-45	3691
3238	3150	3345-22	3351	3369-38	3624	3385-46	3692
3239	3151	3345-23	3352	3369-39	3625	3385-47	3693
3240	3152	3345-24	3353	3369-40	3626	3385-48	3694
3241	3153	3345-25*	3354	3369-41	3627	3385-49	3695
3242	3154	3345-26	3355	3369-42	3628	3385-50	3696
3243	3155	3345-27	3356	3369-43	3629	3385-51	3697
3244*	3156	3345-28	3357	3369-44	3630	3385-52	3698
3245	3157	3345-29	3358	3369-45	3631	3385-53	3699
3246*	3158	3345-30	3359	3369-46	3632	3385-54	3700
3247	3159	3345-31	3360	3369-47	3633	3385-56	3701
3248	3160	3345-32	3361	3369-48	3634	3392	Same
3249	3161	3345-33	3362	3369-49	3635	to	
3250	3162	3345-34	3363	3369-50	3636	3586	
3251	3163	3345-35	3364	3369-51	3637	3587	3702
3252	3164	3345-36	3365	3369-52	3638	3588	3703
3253	3165	3345-37	3366	3369-53	3639	3589	3704
3254	3166	3345-38	3367	3369-54	3640	3590	3705
3255	3167	3345-39	3368	3369-55	3641	3591	3706
3256	3168	3345-40	3369	3369-56	3642	3592	3707
3257	3169	3345-41	3370	3369-57	3643	3593	3708
3265	3183	3345-42*	3371	3369-58	3644	3594	3709
3266	3184	3345-43	3372	3369-59	3645	3595	3710
3267	3185	3345-44	3373	3369-61	3646	3596	3711
3268	3186	3345-45	3374	3385-1	3647	3597	3712
3269	3187	3345-46	3375	3385-2	3648	3598	3713
3270	3188	3345-47	3376	3385-3	3649	3599	3714
3271	3189	3345-48	3377	3385-4	3650	3600	3715
3272	3190	3345-49	3378	3385-5	3651	3601-1	3716
3273	3191	3345-50	3379	3385-6	3652	3601-2*	3717
3274	3192	3345-51	3380	3385-7	3653	3601-3*	3718
3275	3193	3345-52	3381	3385-8	3654	3601-4*	3719
3276	3194	3369-1	3587	3385-9	3655	3601-5*	3720
		3369-2	3588	3385-10	3656	3601-6*	3721

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
3601-7*	3722	3681	3807	3743	3875	3784½	3943
3601-8	3723	3682	3808	3744	3876	3785	3944
3601-9	3724	3683	3809	3745	3877	3786	3945
3601-10*	3725	3684	3810	3746	3878	3787	3946
3601-11	3726	3685	3811	3747	3879	3788	3947
3601-12	3727	3686*	3812	3748	3880	3789	3948
3601-13	3728	3687	3813	3749	3881	3790	3949
3601-14*	3729	3688	3814	3750	3882	3790-1	3950
3601-15*	3730	3689	3815	3751	3883	3791	3951
3601-16*	3731	3690	3816	3751-1	3884	3792	3952
3601-17	3732	3691	3817	3751-2	3885	3793	3953
3601-18*	3733	3692	3818	3751-3	3886	3794	3954
3601-19*	3734	3693	3819	3751-4	3887	3795	3955
3601-20*	3735	3694	3820	3752	3888	3796	3956
3601-21	3736	3695	3821	3753	3889	3797	3957
3601-22	3737	3696	3822	3754	3890	3798	3958
3601-23*	3738	3697	3823	3755	3891	3799	3959
3601-24*	3739	3698	3824	3756	3892	3800	3960
3601-25	3740	3699	3825	3757	3893	3801	3961
3601-26	3741	3700	3826	3758	3894	3802	3962
3639	3758	3701	3827	3759	3895	3803	3963
3639-1	3759	3702	3828	3760	3896	3804	3964
3640	3760	3703	3829	3761	3897	3805	3965
3640½	3761	3704	3830	3762	3898	3806	3966
3641	3762	3705*	3831	3763	3899	3807	3967
3642	3763	3706*	3832	3764	3900	3808	3968
3643	3764	3707	3833	3765	3901	3809	3969
3644	3765	3708	3834	3766	3902	3810	3970
3645	3766	3708½	3835	3766a	3903	3811	3971
3646	3767	3709	3836	3766-1	3904	3812	3972
3647	3768	3710	3837	3766-2	3905	3813	3973
3649	3769	3711	3838	3766-3	3906	3814	3974
3650	3770	3712	3839	3766-4	3907	3815	3975
3651	3771	3713	3840	3766-5	3908	3816	3976
6352	3772	3714	3841	3766-6	3909	3817	3977
3653	3773	3715	3842	3766-7	3910	3818	3978
3654	3774	3715a	3843	3766-8	3911	3819	3979
3655	3775	3715b	3844	3766-9	3912	3820	3980
3656	3776	3715c	3845	3766-10	3913	3821	3981
3657	3777	3715d	3846	3766-11	3914	3822	3982
3658	3778	3715e	3847	3766-12	3915	3823	3983
3659	3779	3716	3848	3766-13	3916	3824	3984
3660	3780	3717	3849	3766-14	3917	3825	3985
3661	3781	3718	3850	3766-15	3918	3826	3986
3662	3782	3719	3851	3766-16	3919	3827	3987
3663	3783	3720	3852	3766-17	3920	3828	3988
3664	3784	3721	3853	3766-18	3921	3829	3989
3665	3785	3722	3854	3766-19	3922	3830	3990
3666	3786	3723	3855	3766-20	3923	3831	3991
3667	3787	3724	3856	3767	3924	3831-1	3992
3668	3788	3725	3857	3768	3925	3831-2	3993
3669	3789	3726	3858	3769	3926	3831-3	3994
3670	3790	3727	3859	3770	3927	3831-4	3995
3671	3791	3728	3860	3771	3928	3831-5	3996
3673a	3792	3729	3861	3772	3929	3831-6	3997
3674a	3793	3730	3862	3773	3930	3832	3998
3675a	3794	3731	3863	3774	3931	3833	3999
3675-1	3795	3732	3864	3775	3932	3834	4000
3675-2	3796	3733	3865	3776	3933	3835	4001
3676	3797	3734	3866	3777	3934	3836	4002
3676a	3799	3735	3867	3778	3935	3837	4003
3676b	3800	3736	3868	3779	3936	3838	4004
3676c	3801	3737	3869	3780	3937	3839	4005
3676d	3802	3738	3870	3780-1	3938	3840	4006
3677	3803	3739	3871	3781	3939	3841	4007
3678	3804	3740	3872	3782	3940	3842	4008
3679	3805	3741	3873	3783	3941	3843	4009
3680	3806	3742	3874	3784	3942	3844	4010

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
3845	4011	3916	4084	3982	4152	4080	4225
3845½	4012	3917	4085	3983	4153	4081	4226
3846	4013	3918	4086	3984	4154	4082	4227
3847	4014	3919	4087	3985	4155	4083	4228
3848	4016	3920	4088	3986	4156	4084	4229
3849	4017	3921	4089	3987	4157	4085	4230
3850	4018	3922	4090	3988	4158	4086	4231
3851	4019	3923	4091	3989	4159	4087	4232
3852	4020	3924	4092	3990	4160	4088	4233
3853	4021	3925	4093	3992	4161	4089	4234
3854	4022	3926	4094	3993	4162	4090	4235
3855	4023	3927	4095	3994	4163	4091*	4236
3856	4024	3927-1	4096	3995	4164	4092*	4237
3857	4025	3928	4097	3996	4165	4093*	4238
3858	4026	3929	4098	3997	4166	4094	4239
3859	4027	3930	4099	3998	4167	4095	4240
3860	4028	3931	4100	3999	4168	4095-1	4241
3861	4031	3932	4101	4000	4169	4096*	4242
3862	4032	3933	4102	4001	4170	4097	4243
3863*	4033	3934	4103	4002	4171	4097-2	4244
3864	4034	3935	4104	4003	4172	4097-3	4245
3865	4035	3936	4105	4004	4173	4097-4	4246
3867	4036	3937	4106	4005	4174	4097-5	4247
3868	4037	3938	4107	4006	4175	4097-6	4248
3869	4038	3939	4108	4007	4176	4097-7	4249
3870	4039	3940	4109	4008	4177	4097-8	4250
3871	4040	3941	4110	4009	4178	4097-9	4251
3872	4041	3942	4111	4010	4179	4097-10	4252
3873	4042	3943	4112	4011	4180	4098	4253
3874	4043	3944	4113	4012	4181	4099	4254
3875	4044	3945	4114	4013	4182	4100	4255
3876	4045	3946	4115	4014	4183	4101	4256
3877*	4046	3947	4116	4015	4184	4102*	4257
3878	4047	3948	4117	4016	4185	4103	4258
3879	4048	3949	4118	4017	4186	4104	4259
3880	4049	3950	4119	4018	4187	4105	4260
3881	4050	3951	4120	4019	4188	4106	4261
3882	4051	3952	4121	4020	4189	4107	4262
3883	4052	3953	4122	4021	4190	4108	4263
3884-1*	4053	3954	4123	4022	4191	4109	4264
3889	4055	3955	4124	4023	4192	4110	4265
3890	4056	3956	4125	4024	4193	4111	4266
3890½	4057	3957	4126	4025	4194	4112	4267
3891	4058	3958	4127	4026	4195	4113	4268
3892	4059	3959	4128	4027	4196	4114	4269
3893	4060	3960	4129	4028	4197	4115	4270
3894	4061	3961	4130	4029	4198	4116	4271
3895	4062	3962	4131	4030	4199	4117	4272
3896	4063	3963	4132	4031*	4200	4118	4273
3897	4064	3964	4133	4032	4205	4119	4274
3898	4065	3965	4134	4062	4207	4120	4275
3899	4066	3966	4135	4063	4208	4121	4276
3900	4067	3967	4136	4064	4209	4122	4277
3901	4068	3968	4137	4065	4210	4123*	4278
3902	4069	3969	4138	4066	4211	4124	4279
3903	4070	3970	4139	4067	4212	4125	4280
3904	4071	3971	4140	4068	4213	4126	4281
3905	4072	3972	4141	4069	4214	4126-1	4282
3906	4073	3973*	4142	4070	4215	4127	4283
3907	4074	3974	4143	4071	4216	4128	4284
3908	4075	3975	4144	4072	4217	4129	4285
3909	4076	3976	4145	4073	4218	4130	4286
3910	4078	3977	4146	4074	4219	4131	4287
3911	4079	3978	4147	4075	4220	4132	4288
3912*	4080	3979	4148	4076	4221	4133	4289
3913*	4081	3979a	4149	4077	4222	4134	4290
3914	4082	3980	4150	4078	4223	4135	4291
3915	4083	3981	4151	4079	4224	4136	4292

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
4136-1	4293	4197	4376	4251	4478	4325	4561
4136-2	4294	4198	4377	4252	4479	4326	4562
4136-3	4295	4199	4378	4253	4480	4327	4563
4136-4	4296	4200	4379	4254	4481	4328	4564
4136-5	4297	4201	4380	4255	4482	4329	4565
4137	4298	4202	4381	4267-1	4472	4330	4566
4138	4299	4203	4382	4267-2	4473	4332	4567
4139	4300	4204	4383	4267-3	4474	4333	4568
4140	4301	4205	4384	4267-4	4475	4334	4573
4141	4302	4206	4385	4267-5	4476	4335	4574
4142*	4303	4207	4386	4267-6	4477	4336	4575
4143*	4305	4208	4387	4268	4483	4337	4576
4144	4306	4209	4388	4269	4484	4338	4577
4145	4307	4210	4389	4270	4485	4339	4578
4146	4308	4211	4390	4271	4486	4340	4579
4147	4309	4212	4391	4272	4487	4341	4580
4148	4310	4213	4392	4273	4488	4342	4581
4149*	4311	4214	4393	4274	4489	4343	4582
4150	4312	4215	4394	4275	4490	4343-1	4583
4151	4313	4216	4395	4276	4491	4344	4585
4153	4314	4217	4396	4277	4492	4345	4586
4154	4315	4218	4397	4278	4493	4346	4587
4155	4316	4219	4398	4279	4494	4347	4588
4156	4317	4220	4399	4280	4495	4348	4592
4157	4318	4221	4400	4281	4496	4349	4593
4158	4319	4222	4401	4282	4497	4350	4594
4159	4320	4223	4402	4283	4498	4351	4595
4160	4321	4224	4403	4284	4499	4352	4596
4161	4322	4225	4404	4285	4500	4353	4597
4162	4323	4226-1*	4405	4286	4501	4354	4598
4163*	4324	4226-2*	4406	4287	4502	4355	4599
4164	4325	4226-3*	4407	4288	4503	4356	4600
4165	4326	4226-4*	4408	4289	4504	4357	4601
4166	4327	4226-5	4410	4290	4505	4358	4602
4167	4328	4226-6*	4411	4291	4506	4359	4603
4168	4329	4226-7*	4412	4292	4507	4360	4604
4169	4330	4226-8*	4413	4293	4508	4361	4605
4170	4331	4226-9*	4414	4294	4509	4362	4606
4171	4332	4226-10*	4415	4295	4510	4363	4607
4172	4333	4226-11	4416	4296	4511	4364	4608
4173	4334	4226-12	4417	4297	4512	4365*	4609
4174	4335	4226-13*	4418	4298	4513	4366	4610
4175	4336	4226-14	4419	4299	4514	4367*	4611
4176	4337	4226-15	4420	4300	4515	4368	4612
4177	4338	4226-16*	4421	4301	4516	4369	4613
4178	4339	4226-17*	4422	4302	4518	4370*	4614
4179	4340	4226-18*	4423	4303	4519	4372*	4615
4180	4341	4226-19*	4424	4304	4520	4373*	4616
4181	4342	4226-20*	4425	4305	4521	4374	4618
4181-1	4343	4226-21	4426	4306	4522	4375	4619
4181-2	4344	4226-22*	4427	4307	4523	4376	4620
4181-3	4345	4226-23*	4428	4308	4524	4377	4621
4181-4	4346	4226-24*	4429	4309	4525	4378	4622
4182	4361	4226-25*	4430	4310	4526	4379	4623
4183	4362	4226-26*	4431	4311	4527	4380	4624
4184	4363	4226-27	4432	4312	4528	4381	4625
4185	4364	4226-28	4433	4313	4529	4382	4626
4186	4365	4226-29	4434	4314	4530	4383	4627
4187	4366	4226-30*	4435	4315	4531	4384	4628
4188	4367	4226-31*	4439	4316	4544	4385	4629
4189	4368	4226-32*	4440	4317	4545	4386	4630
4190	4369	4226-33*	4441	4318	4554	4386-1	4631
4191	4370	4226-34*	4442	4319	4555	4386-2	4632
4192	4371	4226-35*	4443	4320	4556	4386-3	4633
4193	4372	4226-36	4444	4321	4557	4386-4	4634
4194	4373	4226-37*	4445	4322	4558	4386-5	4635
4195	4374	4226-38*	4446	4323	4559	4386-6	4636
4196	4375	4226-41	4448	4324	4560	4386-7	4637

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
4386-8	4638	4430	4724	4497	4793	4557-3	4865
4386-9	4639	4431	4725	4498	4794	4557-4	4866
4386-10	4640	4432	4726	4499	4795	4558	4867
4386-11	4641	4433	4727	4500*	4796	4559	4868
4386-12	4642	4434	4728	4501	4797	4560	4869
4386-13	4643	4435	4729	4502	4798	4561	4870
4387	4644	4436	4730	4503	4799	4562	4871
4387-1	4645	4437	4731	4504	4800	4563	4872
4388	4646	4438	4732	4505	4801	4564	4873
4389	4647	4439	4733	4506	4802	4565	4874
4390	4648	4440	4734	4507	4803	4566	4875
4391	4649	4441	4735	4508	4804	4567	4876
4392	4650	4442	4736	4509*	4805	4568	4877
4393	4651	4443	4737		4805-1	4569	4878
4394	4652	4444	4738	4510	4807	4570	4879
4395	4653	4445*	4739	4511	4808	4571	4880
4395½	4654	4446	4740	4512	4809	4572	4881
4396	4655	4447	4741	4513	4810	4573*	4882
4397	4657	4448	4742	4514	4811	4574	4883
4398	4658	4449	4743	4515	4812	4575*	4884
4399	4659	4450	4744	4516	4813	4576	4885
4399-2	4660	4451	4745	4517	4814	4577	4886
4399-3	4661	4452	4746	4518	4815	4578	4887
4399-4	4662	4453	4747	4519	4816	4579	4888
4399-5	4663	4454	4748	4520	4817	4580*	4889
4399-6	4664	4455	4749	4521	4818	4581	4890
4399-7	4665	4456	4750	4522	4819	4582	4891
4399-8	4666	4457	4751	4523	4820	4583	4892
4399-9	4667	4458	4752	4524	4821	4584	4893
4399-10	4668	4459	4753	4525	4822	4585	4894
4399-11	4669	4460	4754	4526	4823	4586	4895
4399-12	4670	4461	4755	4527	4824	4587	4896
4399-13	4671	4462	4756	4528	4825	4588	4902
4399-14	4672	4463	4757	4529	4826	4589	4903
4399-15	4673	4464	4758	4530	4827	4590	4904
4400	4674	4465	4759	4531	4828	4591	4905
4401	4675	4466	4760	4532	4829	4592	4926
4402	4676	4467	4761	4533	4830	4593	4927
4403	4677	4468	4762	4534	4831	4594	4928
4404	4678	4469	4763	4535	4832	4595	4929
4405	4679	4470*	4764	4536	4833	4596	4930
4406	4680	4471	4765	4537	4834	4597	4931
4407	4681	4471½	4766	4538	4835	4598	4932
4408	4687	4472	4767	4539	4836	4599	4933
4409	4688	4473	4768	4539-1	4837	4600*	4934
4410	4689	4474	4769	4539-2	4838	4601	4935
4411	4690	4475	4770	4539-3	4839	4602	4936
4412	4691	4476	4771	4539-4	4840	4603	4937
4413	4692	4477	4772	4540	4841	4604	4938
4414	4693	4478	4773	4541	4842	4605	4939
4415	4694	4479	4774	4542*	4843	4606*	4940
4413	4695	4480	4775	4543	4844	4607*	4941
4417	4696	4481*	4776	4544	4848	4608	4942
4418	4697	4482*	4777	4545	4849	4609*	4943
4419	4698	4483	4779	4546	4850	4610	4944
4420	4699	4484*	4780	4547	4851	4611	4945
4421	4700	4485	4781	4548	4853	4612	4946
4422	4701	4486	4782	4549	4854	4613*	4947
4423	4702	4487*	4783	4550	4855	4614	4948
4424*	4703	4488	4784	4551	4856	4615	4949
4425	4704	4489	4785	4552	4857	4616	4950
4426	4705	4490	4786	4553	4858	4617	4951
4426-1	4707	4491	4787	4554	4859	4618	4952
4426-2	4708	4492	4788	4555	4860	4619	4953
4426-3	4709	4493*	4789	4556	4861	4620	4954
4427	4721	4494	4790	4557	4862	4621	4955
4428	4722	4495	4791	4557-1	4863	4622	4956
4429	4723	4496	4792	4557-2	4864	4623	4957

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
4624	4958	4697	5055	4763*	{ 5121	4823*	5195
4625	4959	4698	5056	4764	{ 5121-1	4824	5196
4626	4960	4699	5057		5122	4825*	5197
4627	4961	4700	5058	4765*	{ 5123	4826*	{ 5198
4628	4962	4701	5059		{ 5123-1	4827*	{ 5198-1
4629	4963	4702	5060	4766*	5124	4828	5199
4629½	4964	4703	5061	4767*	{ 5125	4829	5201
4630	4966	4704	5062		{ 5125-1	4830	5202
4631	4967	4705	5063	4768*	{ 5126	4831	5203
4632	4968	4706	5064		{ 5126-1	4833	5204
4633	4969	4707*	5065	4769*	5127	4834	5205
4634	4970	4708	5066	4770	5128	4836	5206
4635	4971	4709	5067	4771*	5129	4837	5207
4636	4972	4710	5068	4771-1	5130	4838	5208
4637	4973	4711	5069	4772*	5131	4839	5209
4638	4974	4712	5070	4772-1	5132	4841	5210
4639	4975	4713	5071	4772-2	5133	4842*	5211
4640	4976	4714	5072	4773	5134	4843	5212
4641	4977	4715	5073	4774	5135	4844	5213
4642	4978	4716	5074	4775	5136	4845	5225
4643*	4979	4717	5075	4776	5137	4846	5226
4644*	4981	4718	5076	4777	5138	4847	5227
4645	4982	4719	5077	4778	5139	4848	5228
4646	4983	4720	5078	4779	5140	4849	5229
4647	4984	4721	5079	4780	5141	4850	5230
4648	4985	4722	5080	4781	5142	4851	5231
4649	4986	4723	5081	4782	5155	4852	5232
4650*	4987	4724	5082	4783	5156	4853	5233
4651	4988	4725	5083	4784*	5157	4854	5234
4651-1	4989	4726	5084	4785	5158	4855	5235
4652	4990	4727	5085	4786	5159	4856	5236
4653*	4991	4728	5086	4787	5160	4857	5237
4654	4992	4729	5087	4788	5161	4858	5238
4655	4993	4730	5088	4789	5162	4859	5239
4656	4994	4731	5089	4790	5163	4860	5240
4657	5021	4732	5090	4791	5164	4861	5241
4658	5022	4733	5091	4792	5165	4862	5242
4659	5023	4734	5092	4793*	5166	4863	5243
4660	5024	4735	5093	4794	5167	4864	5244
4661	5025	4736	5094	4795	5168	4865	5245
4662	5026	4737	5095	4796	5169	4866	5246
4663	5027	4738	5096	4797	5170	4867	5247
4664	5028	4739	5097	4798*	5171	4868	5248
4665	5029	4740*	5098	4799*	5172	4869	5249
4666	5030	4741	5099	4800	5173	4870	5250
4667*	5031	4742	5100	4801*	5174	4871	5251
4668*	5032	4743	5101	4802*	5175	4872	5252
4669*	5033	4744	5102	4803	5176	4873	5253
4670*	5034	4745	5103	4804	5177	4874	5254
4671*	5035	4746	5104	4805	5178	4875	5255
4672*	5036	4747	5105	4806	5179	4876	5256
4673	5037	4748	5106		{ 5180	4877	5257
4675*	5038	4749	5107	4807*	{ 5180-1	4878	5258
4678	5039	4750	5108	4808	5182	4879	5259
4683	5040	4751	5109	4809*	{ 5183	4880	5260
4684*	5041	4753	5110		{ 5183-1	4881	5261
4685*	5042	4754	5111	4810	5184	4882	5262
4686	5043	4755	5112	4811*	5185	4883	5263
4687	5044	4756	5113	4812	5186	4884	5264
4688	5045	*4756-1	5114	4813*	5187	4885	5265
4689	5046	4757*	{ 5115	4814	5188	4886	5266
4690	5047		{ 5115-1	4815*	{ 5189	4887	5267
4691	5048	4758	5116		{ 5189-1	4888	5268
4692	5049	4759	5117	4816	5190	4889	5269
4693	5051	4760	5118	4818	5191	4890	5270
4694	5052	4761	5119	4819	5192	4891	5271
4695	5053		{ 5120	4820	5193	4892	5272
4696	5054	4762*	{ 5120-1	4821*	5194	4893	5273
							5274

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
4894	5275	4939	5348	4971-20	5416	5021	5490
4895	5276	4940	5349	4971-21	5417	5022	5491
4896	5277	4940-1	5350	4971-22	5418	5023	5492
4897	5278	4940-2	5351	4971-23	5419	5024	5493
4898	5279	4940-3	5352	4971-24	5420	5024-1	5494
4898-1*	5280	4940-4	5353	4971-25	5421	5024-2	5495
4898-2*	5281	4940-5	5354	4971-26	5422	5024-3	5496
4898-3*	5282	4940-6	5355	4971-27*	5423	5025	5497
4898-4*	5285	4940-7	5356	4971-28	5424	5026	5498
4898-5*	5286	4940-8	5357	4971-29	5425	5027	5499
4898-7	5287	4940-9	5358	4971-30	5426	5028	5500
4899	5288	4940-10	5359	4971-31	5427	5028-1	10927
4900	5289	4940-11	5360	4971-32	5428	5028-2	10928
4901	5290	4940-12	5361	4972	5430	5028-3	10929
4902	5291	4940-13	5362	4973	5431	5028-4	10930
4903	5292	4940-14	5363	4974	5432	5028-5	10931
4904*	5293	4940-15	5364	4975	5433	5029	5501
4905	5294	4940-16	5365	4976	5434	5030	5502
4906	5295	4941	5366	4976-1	5435	5031	5503
4907	5296	4942	5367	4976-2	5436	5032	5504
4908	5297	4943	5368	4976-3*	5437	5032a	5505
4909	5298	4944	5369	4976-4	5438	5032b	5506
4910	5299	4945	5370	4976-5	5439	5032c	5507
4910-1	5300	4946	5371	4976-6	5440	5032d	5508
4910-2	5301	4947	5372	4977	5441	5033	5509
4910-3	5302	4948	5373	4978	5442	5034	5510
4910-4	5303	4949	5374	4979	5443	5035	5512
4910-5	5304	4950	5375	4980	5444	5036	5513
4910-6	5305	4951	5376	4981	5445	5037	5514
4910-7*	5306	4952	5377	4982	5446	5038	5515
4910-8	5307	4953	5378	4983	5447	5039	5516
4910-9	5308	4954	5379	4984	5448	5040	5517
4910-10*	5309	4955	5380	4985	5449	5041	5518
4910-11	5311	4956	5381	4986	5450	5042	5519
4910-12	5312	4957	5382	4987	5451	5043	5520
4910-13	5313	4958	5383	4988	5452	5044	5521
4910-14	5314	4959	5384	4989	5453	5045	5522
4910-15'	5315	4960	5385	4990	5454	5046	5523
4910-16	5316	4961	5386	4991	5455	5047	5524
4910-17	5317	4962	5387	4992	5456	5048	5526
4910-18	5318	4963	5388	4993	5457	5049	5527
4911*	5319	4964	5389	4994	5458	5049-1	5528
4912	5321	4965	5390	4995	5459	5049-2	5529
4913*	5322	4966	5391	4996	5460	5049-3	5530
4914	5323	4967	5392	4997	5461	5049-4*	5531
4915	5324	4968	5393	4998	5462	5049-5	5532
4916	5325	4969	5394	4999	5463	5049-6	5535
4917	5326	4970	5395	5000	5464	5049-7*	4546
4918	5327	4971	5396	5001	5465	5049-8*	4547
4919	5328	4971-1	5397	5002	5466	5049-9*	4548
4920	5329	4971-2	5398	5003	5467	5049-10*	4549
4921	5330	4971-3	5399	5004	5468	5049-12	5536
4922	5331	4971-4	5400	5005	5469	5049-13	4552
4923	5332	4971-5	5401	5006	5470	5054	5537
4924	5333	4971-6	5402	5007	5471	5055	5538
4925	5334	4971-7	5403	5008	5472	5056	5539
4926	5335	4971-8	5404	5009	5473	5057	5540
4927	5336	4971-9	5405	5010	5474	5058	5541
4928	5337	4971-10	5406	5011	5475	5059	5542
4929	5338	4971-11	5407	5012	5476	5060	5543
4930	5339	4971-12	5408	5013*	5477	5061	5544
4931*	5340	4971-13	5409	5013-1*	5478	5062	5545
4933	5342	4971-14	5410	5015	5484	5063	5546
4934	5343	4971-15	5411	5016	5485	5064	5547
4935	5344	4971-16	5412	5017	5486	5065	5548
4936	5345	4971-17	5413	5018	5487	5066	5549
4937	5346	4971-18	5414	5019	5488	5067	5550
4938	5347	4971-19	5415	5020	5489	5068	5551

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
5069	5552	5123	5629	5150-41	5693	5150-111	5765
5070	5553	5124	5630	5150-42	5694	5150-112	5766
5071	5554	5125	5631	5150-43*	5695	5150-113	5767
5071-1	5555	5126	5632	5150-44	5696	5150-114	5768
5071-2	5556	5127	5633	5150-45	5697	5150-115	5769
5071-3	5557	5128	5634	5150-46*	5698	5150-116	5770
5071-4	5558	5129	5635	5150-47	5699	5150-117	5771
5071-5	5559	5130	5636	5150-48*	5700	5150-119	5772
5071-6	5560	5131*	5637	5150-49	5701	5150-120	5773
5071-7	5561	5132	5638	5150-50	5702	5242	5776
5072	5562	5133	5639	5150-51*	5703	5264	5779
5073	5563	5134	5640	5150-52*	5705	5277-1	5781
5074	5564	5135	5641	5150-53	5706	5277-2	5782
5075	5565	5136	5642	5150-54*	5707	5277-3	5783
5076	5566	5137	5643	5150-55	5708	5277-4	5784
5077	5567	5138	5644	5150-56	5709	5277-5*	5785
5078	5568	5139	5645	5150-57	5710	5277-6	5786
5079	5569	5140	5646	5150-58*	5711	5277-7*	5787
5080	5570	5140-1*	9151	5150-59	5712	5277-8*	5788
5081	5571	5140-2	9152	5150-61	5713	5277-9*	5789
5082	5572	5140-3	9153	5150-62	5714	5277-10	5790
5083	5573	5141	5647	5150-63*	5715	5277-11*	5791
5084	5574	5142	5648	5150-64	5716	5277-12	5792
5085	5575	5143	5649	5150-65*	5717	5277-13	5793
5086	5576	5144	5650	5150-66*	5718	5277-14	5794
5087	5577	5145	5651	5150-67	5719	5277-15	5795
5088	5578	5146	5652	5150-68	5720	5277-16*	5796
5089	5579	5147	5653	5150-69	5721	5277-17	5797
5090	5580	5148	5654	5150-70	5722	5277-18	5798
5091	5581	5149	5803	5150-71*	5723	5277-19	5799
5092	5582	5150-1	5655	5150-72	5724	5277-20	5800
5093	5583	5150-3	5656	5150-73*	5725	5277-21	5801
5094	5584	5150-4	5657	5150-74	5726	5288	5824
5095	5585	5150-6*	5658	5150-75	5727	5289	5825
5096	5586	5150-7	5659	5150-76	5728	5290	5826
5097	5587	5150-8	5660	5150-77*	5729	5291	5827
5098	5588	5150-9	5661	5150-78	5730	5292	5828
5099	5589	5150-10	5662	5150-79	5731	5293	5829
5100	5590	5150-11	5663	5150-80	5732	5294	5830
5101	5591	5150-12*	5664	5150-81	5733	5295	5831
5101-1	5592	5150-13	5665	5150-82*	5734	5296	5832
5101-2	5593	5150-14	5666	5150-83	5735	5297	5833
5101-3	5594	5150-15	5667	5150-84	5736	5298	5834
5101-4	5595	5150-16	5668	5150-85	5737	5299	5835
5101-5	5596	5150-17	5669	5150-86	5738	5300	5836
5101-6	5597	5150-18	5670	5150-87	5739	5301	5837
5101-7	5598	5150-19	5671	5150-88*	5740	5302	5838
5102	5599	5150-20	5672	5150-89	5741	5303	5839
5103	5600	5150-21*	5673	5150-90	5742	5304	5840
5104	5601	5150-22	5674	5150-91	5743	5305	5841
5105	5602	5150-23*	5675	5150-92	5744	5306	5842
5106	5603	5150-24*	5676	5150-93*	5745	5307	5843
5107	5604	5150-25*	5677	5150-94	5746	5308	5844
5108a	5609	5150-26	5678	5150-95	5747	5309	5845
5109a	5610	5150-27	5679	5150-96*	5748	5310	5846
5110a	5611	5150-28	5680	5150-97	5749	5311	5847
5111a	5612	5150-29	5681	5150-99*	5750	5312	5848
5112*	5617	5150-30	5682	5150-100*	5751	5313	5849
5113	5619	5150-31	5683	5150-101	5755	5314	5850
5114	5620	5150-32	5684	5150-102	5756	5315	5851
5115	5621	5150-33	5685	5150-103	5757	5316	5852
5116	5622	5150-34	5686	5150-104	5758	5317	5853
5117	5623	5150-35	5687	5150-105	5759	5319	5854
5118	5624	5150-36	5688	5150-106	5760	5320	5855
5119	5625	5150-37	5689	5150-107	5761	5321	5856
5120	5626	5150-38*	5690	5150-108	5762	5322	5857
5121	5627	5150-39	5691	5150-109	5763	5324	5858
5122	5628	5150-40	5692	5150-110	5764	5325	5859

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
5326	5860	5395-14	5944	5431	6026	5481-3	6284
5326-1	5861	5395-15	5945	5432	6027	5482*	6285
5330	5862	5395-16	5946	5433	6028	5483	6286
5331	5863	5395-17	5947	5434	6029	5484	6287
5332	5864	5395-18	5948	5435	6030	5485	6288
5334	5865	5395-19	5949	5436	6031	5486	6289
5335	5866	5395-20	5950	5437	6032	5487	6290
5336	5867	5395-21	5951	5438	6033	5488	6291
5338	5868	5395-22	5952	5439	6034	5489	6292
5339	5869	5395-23	5953	5440	6035	5490	6293
5340	5870	5395-24*	5954	5441	6036	5491	6294
5341	5871	5395-26*	5956	5442	6037	5492	6132
5341-1	5872	5395-28	5958	5443	6038	5493	6133
5341-2	5873	5395-29	5959	5444	6039	5494	6134
5341-3	5874	5395-30	5960	5446f	6248	5495	6135
5342	5887	5395-31	5961	5447b	6249	5496	6136
5343	5888	5395-32	5962	5447c	6250	5497	6047
5344	5889	5395-34	5965	5447e	6251	5498	6048
5345	5890	5395-34b	5966	5447f	6252	5499	6049
5346	5891	5395-37	5977	5448	6253	5500	6050
5348	5892	5395-39	5978	5448d	6254	5501	6051
5349	5893	5395-40*	5979	5448e	6255	5502	6052
5350	5894	5395-43	5980	5448f	6256	5503	6053
5352	5895	5395-44	5981	5448h	6257	5504	6054
5353	5896	5395-45	5982	5448j	6258	5505	6055
5355	5897	5395-46	5983	5448-1*	6259	5506	6056
5356½	5898	5395-47	5984	5448-2	6260	5507	6057
5357	5899	5395-48	5985	5448-3	6261	5508	6058
5358	5900	5395-49	5986	5448-4	6262	5509	6059
5358½	5901	5395-50	5987	5448-5	6263	5510	6060
5359	5902	5395-51	5988	5448-6*	6264	5511	6061
5360	5903	5395-52	5989	5448-7	6265	5512	6062
5363½	5904	5395-53	5990	5449	6140	5513	6063
5364-1	5905	5395-54	5991	5450	6141	5514	6064
5364-2	5906	5395-55	5992	5451	6142	5515	6065
5365-1	5907	5396	5993	5452	6143	5516	6066
5366	5908	5397	5994	5453	6144	5517	6067
5368	5909	5398	5995	5454	6145	5518	6068
5369	5910	5399	5996	5455	6146	5519	6069
5370	5911	5400	5997	5456	6147	5520	6070
5373	5912	5401	5998	5457	6148	5521	6071
5374	5913	5402	5999	5458	6149	5522	6072
5375	5914	5403	6000	5459	6150	5523	6073
5376	5915	5406	6001	5461	6151	5524	6074
5377	5916	5407	6002	5462	6152	5525	6075
5378	5917	5409	6003	5463	6153	5526	6076
5381	5918	5410	6004	5466	6154	5527	6077
5382	5919	5410-1	6005	5466-1	6155	5528	6078
5383	5920	5411	6006	5466-2	6156	5529	6079
5387	5921	5412	6007	5466-3	6157	5530	6080
5388	5922	5413	6008	5466-4	6158	5531	6081
5390	5923	5414	6009	5466-5	6159	5532	6082
5391	5924	5415	6010	5467	6267	5533	6083
5391-1	5925	5416	6011	5468	6268	5534	6084
5392	5926	5417	6012	5469	6269	5535	6085
5393	5927	5418	6013	5470	6270	5536	6086
5393-1	5928	5419	6014	5471	6271	5537	6087
5394	5929	5420	6015	5472	6272	5538	6088
5395	5930	5421	6016	5473	6273	5539	6089
5395-1	5931	5422	6017	5474	6274	5540	6090
5395-5	5936	5423	6018	5475	6275	5541	6091
5395-6	5937	5424	6019	5476	6276	5542	6092
5395-7	5938	5425	6020	5477	6277	5543	6093
5395-9	5939	5426	6021	5478	6278	5544	6094
5395-10	5940	5427	6022	5479	6279	5545	6095
5395-11	5941	5428	6023	5480	6280	5546	6096
5395-12	5942	5429	6024	5481	6281	5547	6097
5395-13	5943	5430	6025	5481-1	6282	5548	6098
				5481-2	6283	5549	6099

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
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5551	6110	5613	6432	5672	6509	5716	6584
5552	6111	5614	6433	5673	6510	5717	6585
5553	6112	5615	6434	5674	6511	5718	6586
5554	6113	5616	6435	5675	6512	5719	6587
5554-1	6114	5617	6436	5676	6513	5720	6588
5554-2	6115	5619	6437	5677	6514	5721	6589
5554-3	6116	5620	6438	5678	6515	5722	6590
5554-4	6117	5621	6439	5679	6516	5723	6591
5554-5	6118	5622	6440	5680	6517	5724	6592
5554-6	6119	5623	6447	5681	6518	5725	6593
5554-7	6120	5623-1	6448	5682	6519	5726	6594
5554-8	6121	5623-2	6449	5683	6520	5727	6595
5554-9	6122	5623-3	6450	5684	6521	5728	6596
5554-10*	6123	5623-4	6451	5685	6522	5729	6597
5554-11	6124	5623-5	6452	5686	6523	5730	6598
5554-12	6125	5623-6	6453	5686-1	6524	5731*	6599
5554-13	6126	5623-7	6454	5686-2	6525	5732	6600
5554-14	6127	5623-8	6455	5686-3	6526	5733*	6601
5554-15	6128	5623-9	6456	5686-4	6527	5734	6602
5555	6129	5623-10	6457	5686-5	6528	5735	6603
5556	6130	5624	6458	5686-6	6529	5736	6604
5557	6181	5625	6459	5686-7	6530	5737*	6605
5558	6295	5626	6460	5686-7 1/2	6531	5738*	6606
5559	6296	5627	6461	5686-8	6532	5739*	6607
5560	6297	5628	6462	5686-9	6533	5740*	6608
5561-4	6298	5629	6463	5686-10	6534	5741*	6609
5561-5	6299	5630	6464	5686-11	6535	5742*	6610
5561-6	6300	5631	6465	5686-12	6536	5743	6611
5562-1*	6312	5632	6466	5686-13	6537	5744*	6612
5562-37	6382	5633	6467	5686-14	6538	5745*	6613
5562-38	6383	5634	6468	5686-15	6539	5746*	6614
5562-39	6384	5635	6469	5686-16	6539 1/2	5747*	6615
5562-40	6385	5636	6470	5686-17	6540	5755*	6616
5562-41	6386	5637	6471	5686-18	6541	5756*	6617
5575	6398	5638	6472	5686-19	6542	5757*	6618
5576*	6399	5639	6473	5686-20	6543	5758	6619
5577*	6400	5640	6474	5686-21	6544	5759	6620
5578*	6401	5641	6475	5686-22*	6545	5760*	6621
5579	6402	5642	6476	5686-23	6546	5761*	6622
5580	6403	5643	6477	5687	6555	5762*	6623
5581	6404	5644	6478	5688	6556	5763*	6624
5582	6405	5645	6479	5689	6557	5764*	6625
5583	6406	5646	6480	5690	6558	5765*	6626
5584	6407	5647	6481	5691	6559	5768	6632
5585	6408	5648	6485	5692	6560	5769	6633
5586	6409	5649	6486	5693	6561	5770	6634
5587	6410	5650	6487	5694	6562	5771	6635
5588	6411	5651	6488	5695	6563	5772	6636
5589	6412	5652	6489	5696	6564	5773	6637
5590-1	6413	5653	6490	5697	6565	5774	6638
5590-2*	6414	5654	6491	5698	6566	5775	6639
5590-3*	6415	5655	6492	5699	6567	5776	6640
5590-4	6416	5656	6493	5700	6568	5777	6641
5590-5	6417	5657	6494	5701	6569	5778	6642
5590-6	6418	5658	6495	5702	6570	5779	6643
5590-7	6419	5659	6496	5703	6571	5780	6644
5590-8	6420	5660	6497	5704	6572	5781	6645
5590-9*	6421	5661	6498	5705	6573	5782	6646
5590-10*	6422	5662	6499	5706	6574	5783	6647
5603	6423	5663	6500	5707	6575	5784	6648
5604	6424	5664	6501	5708	6576	5785	6649
5605	6425	5665	6502	5709	6577	5786	6650
5607	6426	5666	6503	5710	6578	5787	6651
5608	6427	5667	6504	5711	6579	5788	6652
5609	6428	5668	6505	5712	6580	5789	6653
5610	6429	5669	6506	5713	6581	5790	6654
5611	6430	5670	6507	5714	6582	5791	6655

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
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5793	6657	5857	6746	5901c	6810	5954	6938
5794	6658	5857-1	6747	5901d	6811	5955	6939
5795	6659	5857-2	6748	5901f*	6798	5956	6940
5796	6660	5857-3	6749	5901k	6813	5957	6941
5797	6661	5858	6750	5901l	6814	5958	6942
5798	6662	5859	6751	5901m	6815	5959	6943
5799	6663	5860	6752	5902	6816	5960	6944
5800	6664	5861	6753	5905	6816	5961	6945
5801	6665	5862	6754	5907	6852	5962	6946
5802	6666	5863	6755	5908	6853	5964	6947
5803	6667	5864	6756	5909	6854	5965	6948
5804	6668	5865	6757	5910	6855	5966	6949
5805	6669	5866	6758	5911	6856	5967	6950
5806	6670	5868	6759	5912	6857	5968	6951
5807	6671	5869	6760	5913	6858	5969	6952
5808	6672	5869-1*	6761	5914	6859	5970	6953
5809	6673	5869-2	6762	5914-1	6860	5971	6954
5810	6674	5870	6763	5914-2	6861	5972	6955
5811	6675	5871	6764	5914-3	6862	5973	6956
5812	6676	5871-1	6765	5914-4*	6863	5974	6969
5813	6677	5872*	6766	5914-5	6864	5975	6970
5814	6678	5873	6767	5914-6	6865	5976	6971
5815	6679	5874	6768	5914-7	6866	5977	6972
5816	6680	5875	6769	5914-8	6867	5978	6973
5817	6681	5876	6770	5915	6890	5979	6974
5818	6682	5877	6771	5916	6891	6025	7028
5819	6683	5878	6772	5917	6892	6026	7029
5820	6684	5878-1	6790	5918	6893	6027	7030
5821	6685	5878-2	6791	5919	6894	6028	7031
5822	6686	5878-2a*	6794	5920	6895	6028½	6868
5823	6687	5878-2b	6795	5921	6896	6029	6869
5824	6688	5878-2c	6796	5922	6897	6030	6870
5825	6689	5878-2d	6797	5923	6898	6031	6871
5826	6690	5878-2e*	6799	5924	6899	6032	6872
5827	6691	5878-2f*	6800	5925	6900	6033	6873
5828	6692	5878-2g	6801	5926	6901	6034	6874
5829	6693	5878-3	6807	5927	6902	6035	6875
5830	6694	5878-4*	6830	5928	6903	6036	6876
5831	6695	5878-5	6832	5929	6904	6037	6877
5832	6696	5878-6*	6833	5930	6905	6038	6878
5833	6697	5878-7*	6829	5931	6906	6039	6879
5834	6698	5878-8	6831	5932	6907	6040	6880
5835	6720	5878-9	6825	5933-1	6908	6042	6882
5836	6721	5879-1	6773	5933-2	6909	6043	6883
5837	6722	5879-2	6774	5933-3	6910	6044	6884
5838*	6723	5879-3	6775	5934	6911	6045	6885
5839	6724	5879-4	6776	5935	6912	6046	6886
5840	6725	5879-5	6777	5936	6913	6047	6887
5841	6726	5879-6	6778	5937	6914	6048	6888
5842	6727	5879-7	6779	5938	6915	6049	6889
5843	6728	5879-8	6780	5939	6916	6059-1	7032
5844	6729	5879-9	6781	5940	6917	6059-2	7033
5845	6730	5879-10	6782	5941	6918	6059-3	7034
5846	6731	5879-11	6783	5942-1	6919	6059-4	7035
5847	6732	5879-12	6784	5943	6920	6059-5	7036
5848*	6733	5879-13	6785	5944	6921	6059-6*	7037
5849	6734	5879-14*	6819	5945	6922	6059-7*	7038
5850	6735	5879-15	6820	5946	6923	6059-8	7039
5851	6736	5879-16	6786	5947	6924	6059-9	7040
5852	6737	5879-17	6787	5948	6925	6059-10	7041
5853	6738	5879-18*	6788	5949	6926	6059-11	7042
5854	6739	5879-19	6789	5950	6927	6059-12	7043
5855	6740	5897	6827	5951	6928	6059-13	7044
5856	6741	5897½	6817	5952	6929	6059-13½	7045
5856-1	6742	5899	6843	5953	6930	6059-14	7046
5856-2	6743	5900	6828	5953-1	6931	6059-15	7047
5856-3	6744	5901a	6808	5953-2	6932	6059-16	7048

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
6059-17	7049	6059-86	7131	6059-153	7199	6059-221	7274
6059-18	7050	6059-87*	7132	6059-154	7200	6059-222	7275
6059-19	7051	6059-88	7133	6059-155	7201	6059-223	7276
6059-20	7052	6059-89	7134	6059-156	7202	6059-224	7277
6059-21	7053	6059-90	7135	6059-157	7203	6059-225	7278
6059-22	7054	6059-91	7136	6059-158	7204	6059-226	7279
6059-24	7069	6059-92	7137	6059-159	7205	6059-227	7280
6059-25	7070	6059-93	7138	6059-160	7206	6059-228	7281
6059-26	7071	6059-94	7139	6059-161	7207	6059-229	7282
6059-28	7072	6059-95	7140	6059-162	7208	6059-230	7283
6059-29	7073	6059-96	7141	6059-163	7209	6059-231	7284
6059-30	7074	6059-97	7142	6059-164	7210	6059-232	7285
6059-31	7075	6059-98	7143	6059-165	7211	6059-233	7286
6059-32	7076	6059-99	7144	6059-166	7212	6059-234	7287
6059-33	7077	6059-100	7145	6059-167	7213	6059-235	7288
6059-34	7078	6059-101	7146	6059-168	7214	6059-236	7290
6059-35	7079	6059-102	7147	6059-169	7215	6059-237	7291
6059-36	7080	6059-103	7148	6059-170	7216	6059-238	7292
6059-37	7081	6059-104	7149	6059-171	7217	6158	7230-1
6059-38	7082	6059-105	7150	6059-172	7218	6250	7299
6059-39	7083	6059-105½	7151	6059-173	7219	6251	7300
6059-40	7084	6059-106	7152	6059-174	7220	6252	7301
6059-41	7085	6059-107	7153	6059-175	7221	6253	7302
6059-42	7086	6059-108	7154	6059-176	7222	6254	7303
6059-43	7087	6059-109	7155	6059-177	7223	6255	7304
6059-44	7088	6059-110	7156	6059-178	7224	6256	7305
6059-45	7089	6059-111	7157	6059-179	7225	6262-1	7306
6059-45a	7090	6059-112	7158	6059-180	7226	6262-2	7307
6059-46	7091	6059-113	7159	6059-181	7227	6262-3	7308
6059-47	7092	6059-114	7160	6059-182	7228	6262-4	7309
6059-48	7093	6059-115	7161	6059-183	7229	6262-5	7310
6059-49	7094	6059-116	7162	6059-184	7230	6262-6	7311
6059-50	7095	6059-117	7163	6059-185	7231	6262-7*	7312
6059-51	7096	6059-118	7164	6059-186	7232	6262-8*	7313
6059-52	7097	6059-119	7165	6059-187* {	7233	6262-9	7314
6059-53	7098	6059-120	7166		to	6262-10	7315
6059-54	7099	6059-121	7167	6059-190	7242	6262-11	7316
6059-55	7100	6059-122	7168	6059-191	7243	6262-12	7317
6059-56	7101	6059-123	7169	6059-192	7244	6262-13	7318
6059-57	7102	6059-124	7170	6059-193	7245	6262-14	7319
6059-58	7103	6059-125	7171	6059-194	7246	6262-17*	7320
6059-59	7104	6059-126	7172	6059-195	7247	6262-23*	7329
6059-60	7105	6059-127	7173	6059-196	7248	6262-24	7331
6059-61	7106	6059-128	7174	6059-197	7249	6262-25	7332
6059-62	7107	6059-129	7175	6059-198	7250	6262-26	7333
6059-63	7108	6059-130	7176	6059-199	7251	6262-27	7334
6059-64	7109	6059-131	7177	6059-200	7252	6262-28	7335
6059-65	7110	6059-132	7178	6059-201	7253	6262-30	7337
6059-66	7111	6059-133	7179	6059-202	7254	6262-31*	7338
6059-67	7112	6059-134	7180	6059-203	7255	6262-32*	7339
6059-68	7113	6059-135	7181	6059-204	7256	6262-33	7341
6059-69	7114	6059-136	7182	6059-205	7257	6277	7342
6059-70	7115	6059-137	7183	6059-206	7258	6278	7343
6059-71	7116	6059-138	7184	6059-207	7259	6279	7344
6059-72	7117	6059-139	7185	6059-208	7260	6280	7345
6059-73	7118	6059-140	7186	6059-209	7261	6281	7346
6059-74	7119	6059-141	7187	6059-210*	7262	6288	7347
6059-75	7120	6059-142	7188	6059-211	7263	6289	7348
6059-76	7121	6059-143	7189	6059-212	7264	6290	7349
6059-77	7122	6059-144	7190	6059-213	7265	6291	7350
6059-78	7123	6059-145	7191	6059-214	7266	6342	7403
6059-79	7124	6059-146	7192	6059-215	7267	6345	7402
6059-80	7125	6059-147	7193	6059-216	7268	6364	7401
6059-81	7126	6059-148	7194	6059-217	7269	6404	7404
6059-82	7127	6059-149	7195	6059-218	7270	6405	7405
6059-83	7128	6059-150	7196	6059-219	7271	6406	7406
6059-84*	7129	6059-151	7197	6059-220	7272	6407	7407
6059-85	7130	6059-152	7198		7273	6408	7408

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
6409	7409	6481*	7492	6545	7581	6589	7660
6410	7410	6482*	7493	6546	7582	6590	7661
6411	7411	6483*	7494	6547*	7583	6591	7662
6412	7412	6486	7495	6548	7584	6592	7663
6413	7413	6487	7496	6549	7585	6593	7664
6414*	7414	6488*	7497	6552*	7586	6597	7665
6415	7415	6488-1	7498	6553	7587	6598	7666
6415-1	7416	6489*	7499	6554	7588	6599	7667
6416*	7417	6490*	7500	6555	7589	6600	7668
6417*	7418	6491*	7501	6556	7590	6601	7669
6418*	7420	6492	7502	6557	7591	6602	7670
6419*	7421	6493*	7503	6558	7592	6603	7671
6420	7422	6494	7504	6559	7593	6604	7672
6421	7423	6495	7526	6560	7594	6604-1	7673
6422	7424	6496	7527	6561	7595	6604-2*	7674
6423	7425	6497	7528	6562	7596	6604-3*	7675
6424	7426	6498	7529	6563	7597	6604-4*	7676
6425	7427	6499	7530	6564	7598	6604-5*	7679
6426*	7428	6500	7531	6565	7599	6604-6*	7680
6427*	7429	6501	7532	6565-1	7600	6604-7*	7681
6428*	7430	6502	7533	6565-2	7601	6604-8*	7682
6429	7431	6503	7534	6565-3	7602	6604-9	7683
6430*	7432	6504	7535	6566	7615	6604-10*	7684
6431*	7433	6505	7536	6567	7616	6604-11	7685
6432*	7434	6506	7537	6567a	7617	6604-12*	7686
6432-6	7435	6507	7538	6568	7618	6604-12a	7687
6433*	7436	6508	7539	6568a	7619	6604-13*	7688
6434*	7437	6509	7540	6569	7620	6604-14	7689
6435*	7438	6510	7541	6570	7621	6604-15	7690
6436*	7439	6511	7542	6571	7622	6604-16	7691
6437*	7440	6512	7543	6571-1	7623	6604-17*	7692
6438*	7441	6513	7544	6571-2	7624	6604-18*	7693
6439*	7442	6514	7545	6571-3	7624½	6604-19	7696
6440*	7443	6515	7546	6571-6	7625	6604-20	7697
6441*	7444	6516	7547	6571-7	7626	6604-21	7698
6442*	7445	6517	7548	6571-8	7627	6604-21a	7699
6443*	7446	6518	7549	6571-9	7628	6604-22*	7700
6444*	7447	6519	7550	6571-10	7629	6604-23*	7701
6445	7448	6520	7551	6571-11	7630	6604-24*	7703
6446	7449	6521	7552	6571-12	7631	6604-24a	7704
6447	7450	6522	7553	6571-13	7632	6604-26	7705
6449*	7451	6523	7554	6571-14	7633	6604-27	7706
6450	7452	6524	7555	6571-15	7634	6604-28	7707
6451*	7453	6525	7556	6571-16	7635	6604-29	7708
6452	7454	6526	7557	6571-17	7636	6604-30	7709
6453	7455	6527	7558	6571-17½	7637	6604-31	7710
6454*	7456	6528	7559	6571-18	7638	6604-32	7711
6455	7457	6529	7560	6571-19	7639	6605	7797
6456*	7458	6530	7561	6571-20	7640	6606	7798
6457*	7459	6531	7562	6571-21*	7641	6607	7799
6462*	7474	6532	7563	6572	7642	6608	7800
6463	7475	6533	7564	6573	7643	6609	7801
6464*	7476	6533-1	7565	6574	7644	6610	7802
6465	7477	6533-2	7566	6575	7645	6611	7803
6466	7478	6533-3	7567	6576	7646	6612	7804
6467	7479	6533-4	7568	6577	7647	6613	7805
6468	7480	6533-5	7569	6578	7648	6614	7806
6469	7481	6534	7570	6579	7649	6615	7807
6470	7482	6535	7571	6580	7650	6616	7808
6471*	7483	6536	7572	6580a	7651	6617	7809
6472	7484	6537	7573	6581	7652	6618	7810
6473	7485	6538	7574	6582	7653	6619	7811
6475*	7486	6539	7575	6583	7654	6620	7812
6476*	7487	6540	7576	6584	7655	6621	7813
6477*	7488	6541	7577	6585	7656	6622	7814
6478*	7489	6542	7578	6586	7657	6628	7815
6479*	7490	6543	7579	6587	7658	6629	7816
6480*	7491	6544	7580	6588	7659	6630	7817

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
6630-1	7818	6693	7894	6749	7967	6805	8046
6631	7819	6694	7895	6750	7968	6806	8052
6632	7820	6695	7896	6751	7969	6807	8053
6633	7821	6696	7897	6752	7970	6807-1	8054
6634	7822	6697	7898	6753	7971	6807-2	8055
6635	7823	6698	7899	6754	7972	6807-3	8056
6635-1	7824	6699	7900	6755	7973	6807-4	8057
6635-2	7825	6700	7901	6756	7974	6808	8058
6635-3	7826	6701	7902	6757	7975	6809	8059
6635-4	7827	6702	7903	6758	7976	6810	8060
6636	7828	6703	7904	6759	7977	6811	8061
6637	7829	6704	7905	6760	7978	6812	8062
6638	7830	6704-1	7906	6761	7979	6813	8063
6639	7831	6704-2	7907	6762	7980	6814	8064
6640	7832	6704-3	7908	6763	7981	6815	8065
6641	7833	6704-4	7909	6764	7982	6816	8066
6641-1	7834	6704-5	7910	6765	7983	6817	8067
6642	7835	6704-6	7911	6766	7984	6818	8068
6643	7836	6704-7	7912	6767	7985	6819	8069
6644	7837	6704-8	7913	6768	7986	6820	8070
6645	7838	6704-9	7914	6768-1	7987	6821	8071
6646	7839	6704-14	7918	6768-2	7988	6822	8072
6647	7840	6704-15	7919	6768-3	7989	6823	8073
6648	7841	6705	7922	6768-4	7990	6824	8074
6649	7842	6706	7923	6769	7994	6825	8075
6650	7843	6707	7924	6770	7995	6826	8076
6651	7844	6708	7925	6771	7996	6827	8077
6652	7845	6709	7926	6772	7997	6828	8078
6653	7846	6710	7927	6773	7998	6829	8079
6654	7847	6711	7928	6774	7999	6830	8080
6655	7849	6712	7929	6774-1*	8000	6831*	8081
6659	7850	6713	7930	6775	8001	6831-1	8082
6660	7851	6714	7931	6776*	8002	6831-2	8083
6661	7852	6715	7932	6777	8006	6831-3	8084
6662	7854	6716	7933	6778	8007	6831-4	8085
6663	7855	6717	7934	6779	8008	6831-5	8086
6664	7856	6718	7935	6780	8009	6832	8087
6665	7857	6719	7936	6781	8010	6833	8088
6666	7858	6720	7937	6781-1	8011	6834	8089
6667	7859	6721	7938	6781-2	8012	6835	8090
6668	7866	6722	7939	6781-3	8013	6836	8091
6670-1	7867	6723	7940	6781-4	8014	6837	8092
6670-3*	7868	6724	7941	6781-5	8015	6838	8093
6671	7869	6725	7942	6781-6	8016	6839	8094
6672	7870	6726	7943	6781-7	8017	6840	8095
6673	7871	6727	7944	6782*	8018	6841	8096
6674	7872	6728	7945	6782-1	8019	6842	8097
6675*	7873	6729	7946	6783*	8020	6843	8098
6676	7874	6730	7947	6784	8021	6844*	8099
6677	7875	6731	7948	6785	8022	6845*	8100
6678	7876	6732	7949	6786	8023	6846	8101
6678-1	7877	6733	7950	6787*	8024	6847	8102
6678-2	7878	6734	7951	6788*	8025	6848*	8103
6680	7879	6735	7952	6790	8026	6849*	8104
6681	7880	6736	7953	6791	8028	6850	8105
6682	7881	6737	7954	6792	8029	6851	8106
6683	7882	6738	7955	6793	8030	6852*	8107
6684	7883	6739	7956	6794*	8031	6853	8108
6684-1	7884	6740	7957	6795	8032	6854	8109
6684-2	7885	6741	7958	6796	8033	6854 1/2	8110
6685	7886	6742	7959	6797*	8034	6855	8111
6686	7887	6743	7960	6798	8035	6856	8112
6687	7888	6744	7961	6799	8040	6857	8113
6688	7889	6744-1	7962	6800	8041	6858	8114
6689	7890	6745	7963	6801	8042	6859	8115
6690	7891	6746	7964	6802	8043	6860	8116
6691	7892	6747	7965	6803	8044	6861	8117
6692	7893	6748	7966	6804	8045	6862	8118

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
6863	8119	6949	8205	7021	8289	7103	8392
6864	8120	6950	8206	7022	8290	7104	8393
6865	8121	6951	8207	7023	8291	7105	8394
6883	8137	6953	8208	7036	8313	7106	8395
6885	8138	6954	8209	7037	8314	7107	8396
6886	8142	6955	8210	7041	8315	7108	8397
6887	8143	6956	8211	7042	8316	7109	8398
6888	8144	6957	8212	7043	8317	7110	8399
6889	8145	6958	8213	7044	8318	7111	8400
6890	8146	6959	8214	7045	8319	7112	8401
6891	8147	6960	8215	7046	8320	7113	8402
6892	8148	6961	8216	7047	8321	7114	8403
6893	8149	6962	8217	7048	8322	7115	8404
6894	8150	6963	8218	7049	8323	7116	8405
6895	8151	6964	8219	7050	8324	7117	8406
6896	8152	6965	8220	7051	8325	7118	8407
6897	8153	6966	8221	7052	8326	7119	8408
6898	8154	6967	8222	7053	8341	7120	8409
6899	8155	6968	8223	7054	8342	7121	8410
6900	8156	6969	8224	7055	8343	7122	8411
6901	8157	6970	8225	7056	8344	7123	8412
6902	8158	6971	8226	7057	8345	7124	8413
6903	8159	6972	8227	7058	8346	7125	8414
6904	8160	6973	8228	7059	8347	7126	8415
6905	8161	6974	8229	7060	8348	7127	8416
6906	8162	6975	8230	7061	8349	7128	8417
6907	8163	6976	8231	7062	8350	7129	8418
6908	8164	6977	8232	7063	8351	7130	8419
6909	8165	6978	8233	7064	8352	7131	8420
6910	8166	6979	8234	7065	8353	7132	8421
6911	8167	6980	8235	7066	8354	7133	8422
6912	8168	6981	8236	7067	8355	7134	8423
6913	8169	6982	8237	7067 1/2	8356	7135	8424
6914	8170	6983	8238	7068	8357	7136	8425
6915	8171	6984	8239	7069	8358	7137	8426
6916	8172	6985	8240	7069-1	8359	7138	8427
6917	8173	6986	8241	7069-2	8360	7139	8428
6918	8174	6987	8242	7069-3	8361	7140	8429
6919	8175	6988	8243	7069-4	8362	7141	8430
6920	8176	6989	8244	7070	8363	7142	8431
6921	8177	6990	8245	7071	8364	7143	8432
6922	8178	6991	8246	7073	8365	7144	8433
6923	8179	6992	8255	7074	8366	7145	8434
6924	8180	6993	8256	7075	8367	7146	8435
6925	8181	6994	8257	7076	8368	7147	8436
6926	8182	6995	8258	7077	8369	7150	8437
6927	8183	6996	8259	7078	8370	7151	8438
6928	8184	6997	8260	7079	8371	7152	8439
6929	8185	6998	8261	7081	8372	7153	8440
6930	8186	6999	8262	7083	8373	7154	8441
6931	8187	7000	8263	7084	8374	7155	8442
6932	8188	7001	8264	7085	8375	7156	8443
6933	8189	7001-1	8265	7086	8376	7157	8444
6934	8190	7003	8267	7087	8377	7158	8445
6935	8191	7004	8268	7088	8378	7159	8446
6936	8192	7005	8269	7089	8379	7160	8447
6937	8193	7006	8277	7090	8380	7161	8448
6938	8194	7007	8278	7091	8381	7162	8449
6939	8195	7011	8279	7092	8382	7163	8450
6940	8196	7012	8280	7093	8383	7164	8451
6941	8197	7013	8281	7094	8384	7165	8452
6942	8198	7014	8282	7095	8385	7166	8453
6943	8199	7015	8283	7096	8386	7167	8454
6944	8200	7016	8284	7097	8387	7168	8455
6945	8201	7017	8285	7099	8388	7171	8456
6946	8202	7018	8286	7100	8389	7172	8457
6947	8203	7019	8287	7101	8390	7173	8458
6948	8204	7020	8288	7102	8391	7174	8459

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
7175	8460	7363	8627	7463	8917	7519-3	8985
7176	8461	7364	8628	7464	8918	7520	8992
7181*	8467	7365	8629	7465	8919	7521	8993
7182*	8468	7366	8630	7466	8920	7522	8994
7183*	8469	7367	8631	7467	8921	7523	8995
7184*	8470	7368	8632	7468	8922	7524	8996
7189	8472	7369	8633	7469	8923	7525	8997
7192	8473	7370	8634	7470	8924	7526	8998
7194*	8474	7371	8635	7471	8925	7527	8999
7200	8491	7408	8857	7472	8926	7528	9000
7206*	8492	7409	8858	7473	8927	7579	9001
7207	8493	7410	8859	7474	8928	7580	9002
7216*	8497	7411	8860	7475	8929	7581	9003
7218*	8498	7412	8861	7476	8930	7582	9004
7219	8499	7413	8862	7477	8931	7583	9005
7220*	8500	7414	8863	7478	8932	7584	9006
7221	8501	7415	8864	7479	8933	7585	9007
7222*	8502	7416	8865	7480	8934	7586	9008
7223*	8508	7417	8866	7481	8935	7587	9009
7224*	8504	7418	8867	7482	8936	7588	9010
7225	8505	7419	8868	7483	8937	7589	9011
7226*	8506	7420	8869	7484	8938	7590	9012
7227*	8507	7421	8870	7485	8939	7591	9013
7229	8508	7422	8871	7486	8940	7592	9014
7230*	8509	7423	8872	7487	8941	7593	9015
7232	8510	7424	8873	7488	8942	7594	9016
7233*	8511	7425	8874	7489	8943	7595	9017
7234*	8512	7426	8875	7490	8944	7596	9018
7235*	8513	7427	8876	7491	8945	7597	9019
7236*	8514	7428	8877	7492	8946	7598	9020
7238*	8515	7429	8878	7493	8947	7599	9021
7323	8528	7430	8879	7493-1	8948	7600	9022
7324*	8529	7431	8880	7493-2	8949	7601	9023
7326	8531	7432	8881	7493-3	8950	7602	9024
7327*	8532	7433	8882	7494	8951	7603	9025
7328*	8593	7434	8883	7495	8952	7604	9026
7329*	8594	7435	8884	7496	8953	7605	9027
7330*	8595	7436	8885	7497	8954	7606	9028
7331*	8596	7437	8886	7498	8955	7607	9029
7332*	8597	7438	8887	7499	8956	7608	9030
7334*	8598	7439	8888	7500	8957	7609	9031
7335	8599	7440	8889	7501	8958	7610	9032
7337	8601	7441	8890	7502	8959	7611	9033
7338*	8602	7442	8891	7502-1	8960	7612	9034
7339	8603	7443	8892	7502-2	8961	7612-1	9035
7340	8604	7444	8894	7503	8962	7612-2	9036
7341	8605	7444-1	8895	7504	8963	7613	9037
7342	8606	7445	8896	7505	8964	7614	9038
7343	8607	7446	8897	7506	8965	7615	9039
7344	8608	7447	8898	7507	8966	7616	9040
7345	8609	7448	8899	7507-1	8967	7617	9041
7346	8610	7449	8900	7507-2	8968	7618	9042
7347	8611	7450	8901	7508	8969	7619	9043
7348	8612	7451	8902	7509	8970	7620	9044
7349	8613	7452	8903	7510	8971	7625	9045
7350	8614	7453	8904	7511	8972	7626	9046
7351	8615	7454	8905	7512	8973	7627	9047
7352	8616	7454-1	8906	7516a	8974	7628	9048
7353	8617	7454-2	8907	7516b	8975	7629	9049
7354	8618	7454-3	8908	7516c	8976	7630	9050
7355	8619	7455	8909	7517	8977	7631	9051
7356	8620	7456	8910	7517-1	8978	7632	9052
7357	8621	7457	8911	7517-2	8979	7633	9053
7358	8622	7458	8912	7517-3	8980	7634	9054
7359	8623	7459	8913	7518	8981	7635	9055
7360	8624	7460	8914	7519	8982	7636	9056
7361	8625	7461	8915	7519-1*	8983	7637	9057
7362	8626	7462	8916	7519-2	8984	7638	9058

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
7639	9059	7671-14	9127	7756	9200	7814i	9271
7640	9060	7671-15	9128	7757	9201	7814j	9272
7641	9061	7671-16*	9129	7758	9202	7815	9273
7642	9062	7671-17*	9130	7759	9203	7816	9274
7643	9063	7671-18	9132	7760	9204	7817	9275
7644	9064	7671-19	9133	7761	9205	7818	9276
7645	9065	7671-20	9134	7762	9206	7819	9277
7646	9066	7671-21	9135	7763	9207	7820	9278
7647	9067	7671-22	9136	7764	9208	7821	9279
7648	9068	7671-23	9137	7765	9209	7822	9280
7649	9069	7671-24	9138	7766	9210	7823	9281
7650	9070	7671-25	9139	7767	9214	7824	9282
7651	9071	7671-26	9140	7768	9215	7825	9283
7652	9072	7671-27	9141	7769	9216	7826	9284
7653	9073	7671-28	9142	7770	9217	7827	9285
7654	9074	7671-29*	9143	7771	9218	7828	9286
7655	9075	7671-30	9144	7772	9219	7829	9287
7656-1	9076	7671-31	9145	7773	9220	7831	9288
7656-2	9077	7671-32	9146	7774	9221	7832	9289
7656-3	9078	7671-33	9147	7775	9222	7833	9290
7656-4	9079	7671-34	9148	7776	9223	7834	9291
7656-5	9080	7671-35	9149	7777	9224	7835	9292
7656-6	9081	7671-36	9150	7778	9225	7836	9293
7656-7	9082	7718-1	9155	7779	9226	7837	9294
7656-8	9083	7718-2	9156	7780	9227	7838	9295
7663	9084	7718-3	9157	7781	9228	7839	9296
7665	9085	7718-4	9158	7782	9229	7840	9297
7667	9086	7718-5	9159	7783	9230	7841	9298
7668	9087	7718-6	9160	7784	9231	7842	9299
7669	9088	7718-7	9161	7785	9232	7843	9300
7670	9089	7718-8	9162	7786	9233	7844	9301
7670-1	9090	7719	9163	7787	9234	7845	9302
7670-2	9091	7720	9164	7788	9235	7846	9303
7670-3	9092	7721	9165	7789	9236	7847	9304
7670-4	9093	7722	9166	7790	9237	7848	9305
7670-5	9094	7723	9167	7791	9238	7849	9306
7670-6	9095	7724	9168	7792	9239	7850	9307
7670-7	9096	7725	9169	7793	9240	7851	9308
7670-8	9097	7726	9170	7794	9241	7852	9309
7670-9	9098	7727	9171	7795	9242	7853	9310
7670-10	9099	7728	9172	7796	9243	7854	9311
7670-11	9100	7729	9173	7797	9244	7855	9312
7670-12	9101	7730	9174	7798	9245	7856	9313
7670-13	9102	7731	9175	7799	9246	7857	9314
7670-14	9103	7732	9176	7800	9247	7858	9315
7670-15	9104	7733	9177	7801	9248	7859	9316
7670-16	9105	7734*	9178	7801a	9249	7860	9317
7670-17	9106	7735	9179	7802	9250	7861	9318
7670-18	9107	7735½	9180	7803	9251	7862	9323
7670-19	9108	7736	9181	7804	9252	7863	9324
7670-20	9109	7738	9182	7805	9253	7864	9325
7670-21	9110	7739	9183	7806	9254	7865	9326
7670-22	9111	7740	9184	7807	9255	7866	9327
7670-23	9112	7741	9185	7808	9256	7867	9328
7670-24	9113	7742	9186	7809	9257	7868	9329
7671-1	9114	7743*	9187	7810	9258	7869	9330
7671-2	9115	7744	9188	7811	9259	7872	9331
7671-3	9116	7745	9189	7812	9260	7873	9332
7671-4	9117	7746	9190	7813	9261	7874	9333
7671-5	9118	7747	9191	7814	9262	7875	9334
7671-6*	9119	7748*	9192	7814a	9263	7876	9335
7671-7	9120	7749	9193	7814b	9264	7877	9336
7671-8	9121	7750	9194	7814c	9265	7878	9337
7671-9	9122	7751	9195	7814d	9266	7879	9338
7671-10	9123	7752	9196	7814e	9267	7880	9339
7671-11	9124	7753	9197	7814f	9268	7881	9340
7671-12	9125	7754	9198	7814g	9269	7882	9341
7671-13	9126	7755	9199	7814h	9270	7883	9342

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
7884	9343	7892-58	9411	7996*	9479	8055	9553
7885	9344	7892-59	9412	7997	9480	8056	9554
7886	9345	7892-60	9413	7998	9481	8057	9555
7887	9346	7892-61	9414	7999	9482	8058	9556
7888	9347	7892-62	9415	8000	9483	8059	9557
7889	9348	7892-63	9416	8001	9484	8060	9558
7890	9349	7892-64	9417	8002	9485	8078	9579
7891	9350	7892-65	9418	8003	9486	8079	9580
7892*	9351	7892-66	9419	8004	9487	8080	9581
7892-1	9352	7892-67	9420	8005	9488	8081	9582
7892-2	9353	7892-68	9421	8006	9489	8082	9583
7892-3	9354	7892-69	9422	8007	9490	8083	9584
7892-4	9355	7892-70	9423	8008	9491	8084	9585
7892-5	9356	7892-71	9424	8009	9492	8085	9586
7892-6	9357	7892-72	9425	8009-1	9493	8086	9587
7892-7	9358	7965	9426	8009-2	9494	8087	9588
7892-8	9359	7966	9427	8010-8	9495	8088	9589
7892-9	9360	7967	9428	8010-9	9496	8089	9590
7892-10	9361	7968	9429	8010-10	9497	8090	9591
7892-11	9362	7969	9430	8010-11	9498	8091	9592
7892-12*	9363	7970	9431	8010-12	9499	8092	9593
7892-12½	9364	7971*	9432	8010-13	9500	8093	9594
7892-13	9365	7972	9433	8010-14	9501	8094	9595
7892-14	9366	7973	9434	8011	9505	8095*	9596
7892-15	9367	7974	9435	8012	9506	8096	9597
7892-16	9368	7975*	9436	8013	9507	8097	9598
7892-17	9369	7976	9437	8014	9508	8098	9599
7892-18	9370	7977	9438	8015	9509	8099	9600
7892-19	9371	7978	9439	8016	9510	8100	9603
7892-20	9372	7979	9440	8017	9511	8101	9604
7892-21	9373	7980	9441	8018	9515	8102	9605
7892-22	9374	7981	9442	8019	9516	8103	9606
7892-23	9375	7982	9443	8020	9517	8104	9607
7892-24*	9376	7983	9444	8021	9518	8105	9608
7892-25	9377	7984	9445	8022	9519	8106	9609
7892-26	9378	7985	9446	8023	9520	8107	9610
7892-27	9379	7986	9447	8024	9521	8108	9611
7892-28	9380	7987	9448	8025	9522	8109	9612
7892-29	9381	7987-1	9449	8026	9523	8110	9613
7892-30	9382	7987-2	9450	8027	9524	8111	9614
7892-31	9383	7987-3	9451	8028	9525	8112	9615
7892-32	9384	7987-4	9452	8029	9526	8113	9616
7892-33	9385	7987-5	9453	8030	9527	8114*	9617
7892-34	9386	7987-6	9454	8031	9528	8115*	9618
7892-34½	9387	7987-7	9455	8032	9529	8116	9619
7892-35*	9388	7987-8	9456	8033	9530	8117	9620
7892-36*	9389	7987-9	9457	8034	9531	8118	9621
7892-37	9390	7987-10	9458	8035	9532	8119	9622
7892-38	9391	7987-11	9459	8036	9533	8119-1	9623
7892-39	9392	7987-12	9460	8037	9534	8119-2	9624
7892-40	9393	7987-13	9461	8038	9535	8120	9625
7892-41	9394	7987-14	9462	8039	9536	8121*	9626
7892-42	9395	7987-15	9463	8040	9537	8122	9627
7892-43	9396	7987-16	9464	8041	9538	8123	9628
7892-44	9397	7987-17	9465	8042	9539	8124	9629
7892-45	9398	7987-18	9466	8043	9540	8125	9630
7892-46	9399	7987-19	9467	8043-1	9541	8126	9631
7892-47*	9400	7987-20	9468	8044	9542	8127	9632
7892-48	9401	7987-21	9469	8045	9543	8128	9633
7892-49	9402	7987-22	9470	8046	9544	8129	9634
7892-50	9403	7988	9471	8047	9545	8130	9635
7892-51	9404	7989	9472	8048	9546	8131	9636
7892-52	9405	7990	9473	8049	9547	8132	9637
7892-53	9406	7991	9474	8050	9548	8133	9638
7892-54	9407	7992	9475	8051	9549	8134	9639
7892-55	9408	7993	9476	8052	9550	8135	9640
7892-56	9409	7994	9477	8053	9551	8136	9641
7892-57	9410	7995	9478	8054	9552	8137	9642

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
8138	9643	8166a	9724	8212-17	9793	8231	9861
8139	9644	8167a	9725	8212-18	9794	8232	9862
8140	9645	8168a	9726	8212-19	9795	8233	9863
8141	9646	8169a	9727	8212-20	9796	8234	9864
8142	9647	8170a	9728	8212-21	9797	8235	9865
8143	9648	8171a	9729	8212-22	9798	8236	9866
8144	9649	8172a*	9731	8212-23	9799	8237	9867
8145	9650	8173a	9732	8212-24	9800	8238	9868
8145-1	9651	8173-1	9733	8212-25	9801	8239	9869
8145-2	9652	8173-2	9734	8212-26	9802	8240	9870
8145-3	9653	8174a	9735	8212-27	9803	8241	9871
8145-4	9654	8175a	9736	8212-28	9804	8242	9872
8145-5	9655	8176a	9737	8212-29	9805	8243	9873
8145-6	9656	8177a	9738	8212-30	9806	8244	9874
8145-7	9657	8177-1	9739	8212-31	9807	8245	9875
8145-8	9658	8177-2	9740	8212-32	9808	8246	9876
8145-9	9659	8181a	9741	8212-33	9809	8247	9877
8145-10	9660	8182a	9742	8212-34	9810	8248	9878
8145-11	9661	8183a	9743	8212-35	9811	8249	9879
8145-12	9662	8184a	9744	8212-36	9812	8250	9880
8146	9664	8184-1	9745	8212-37	9813	8251	9881
8147	9665	8184-2	9746	8212-38	9814	8252	9882
8147-1	9666	8185a	9747	8212-39	9815	8253	9883
8147-2	9667	8186a	9748	8212-40	9816	8254	9884
8147-3	9668	8187a	9749	8212-41	9817	8255	9885
8148	9669	8188a	9750	8212-42	9818	8256	9886
8149	9670	8189a	9751	8212-43	9819	8257	9887
8150	9671	8190a	9752	8212-44	9820	8258	9888
8151	9672	8191a	9753	8212-45	9821	8259	9889
8152	9673	8192a	9754	8212-46	9822	8260	9890
8153	9674	8193a	9755	8212-47	9823	8287	9891
8154	9675	8194a	9756	8212-48	9824	8288	9892
8155	9676	8195a	9757	8212-49	9825	8289	9893
8156	9677	8196a	9758	8212-50	9826	8290	9894
8157	9678	8197a	9759	8212-51	9827	8291	9895
8158	9679	8198a	9760	8212-52	9828	8292	9896
8159	9680	8199a	9761	8212-53	9829	8293	9897
8160	9681	8200a	9762	8212-54	9830	8294	9898
8161	9682	8201a	9763	8212-55	9831	8295	9899
8162	9683	8202a	9764	8212-56	9832	8296	9900
8163	9684	8203a	9765	8212-57	9833	8297	9901
8164	9685	8204a	9766	8212-58	9834	8298	9902
8165	9686	8205a	9767	8212-59	9835	8298-1	9903
8165a	9687	8206a	9768	8212-60	9836	8299	9904
8165-1	9688	8207a	9769	8212-61	9837	8300	9905
8165-2	9689	8208a	9770	8212-62	9838	8301	9906
8165-3	9690	8209a	9771	8212-63	9839	8302	9907
8165-3½	9691	8210a	9772	8212-64	9840	8303	9908
8165-4*	9692	8211a	9773	8212-65	9841	8304	9909
8165-5*	9693	8212a	9774	8212-66	9842	8305	9910
8165-6	9694	8212b	9775	8213	9843	8306	9911
8167-7	9695	8212c	9776	8214	9844	8307	9912
8165-8	9696	8212-1	9777	8215	9845	8308	9913
8165-10	9697	8212-2	9778	8216	9846	8309	9914
8165-11	9698	8212-3	9779	8217	9847	8310	9915
8165-12*	9699	8212-4	9780	8218	9848	8311	9916
8165-13*	9700	8212-5	9781	8219	9849	8312	9917
8165-14	9701	8212-6	9782	8220	9850	8313	9918
8165-15	9709	8212-7	9783	8221	9851	8314	9919
8165-16	9710	8212-8	9784	8222	9852	8315	9920
8165-17	9711	8212-9	9785	8223	9853	8316	9921
8165-18	9712	8212-10	9786	8224	9854	8317	9922
8165-19	9713	8212-11	9787	8225	9855	8318	9923
8165-20	9714	8212-12	9788	8226	9856	8319	9924
8165-21	9715	8212-13	9789	8227	9857	8320	9925
8165-22	9716	8212-14	9790	8228	9858	8321	9926
8165-23	9717	8212-15	9791	8229	9859	8322	9927
8165-24	9718	8212-16	9792	8230	9860	8323	9928

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
8324	9930	8385-6	9998	8479	10164	8555	10257
8325	9931	8391*	10008	8481	10165	8556	10258
8326	9932	8392*	10009	8482	10166	8557	10259
8327	9933	8393	10010	8483	10167	8558	10260
8328	9934	8394	10011	8484	10168	8559-1	10261
8329	9935	8395*	10012	8485	10169	8559-2*	10262
8330	9936	8396*	10013	8486	10170	8559-3	10263
8331	9937	8397*	10014	8487	10171	8559-4	10264
8332	9938	8397½	10015	8488	10172	8559-5	10265
8333	9939	8398	10016	8489	10173	8559-6	10266
8334	9940	8399	10017	8490	10186	8559-7	10267
8335	9941	8400*	10018	8491	10187	8559-8	10268
8336	9942	8401	10019	8492	10188	8568	10269
8337	9943	8402*	10020	8493	10189	8569	10270
8338	9944	8403*	10021	8494	10190	8570	10271
8339	9945	8404	10022	8495	10191	8571	10272
8340	9946	8405*	10024	8496	10192	8572	10273
8341*	9947	8407	10025	8497	10193	8573	10274
8342	9948	8408	10026	8498	10194	8574	10275
8343	9949	8409	10027	8499	10195	8575	10276
8344	9950	8410	10028	8500	10196	8575-1	10277
8345	9951	8411	10029	8501	10197	8575-2	10278
8347	9952	8416	10030	8502	10198	8575-3	10279
8348	9953	8417	10031	8503	10199	8576	10280
8349	9954	8418	10032	8504	10200	8577	10281
8350	9955	8419	10033	8505	10201	8579	10282
8351	9956	8420	10034	8506	10202	8580	10283
8352*	9957	8421	10035	8507	10203	8581	10284
8353	9958	8422	10036	8508	10210	8582	10285
8354	9959	8423	10037	8509	10211	8583	10286
8355	9960	8424	10038	8510	10212	8584	10287
8356	9961	8425	10039	8511	10213	8585	10288
8357	9962	8426	10040	8512	10214	8586	10289
8358	9963	8427	10041	8513	10215	8587	10290
8358-1	9964	8428	10042	8514	10216	8588	10291
8358-2	9965	8429	10043	8515	10217	8589	10292
8359	9966	8431	10044	8516	10218	8590	10293
8360	9967	8433	10045	8517	10219	8591	10294
8361	9968	8434	10046	8518	10220	8592	10295
8362	9969	8435	10047	8519	10221	8593	10296
8363	9970	8436	10048	8520	10222	8594	10297
8364	9971	8437	10049	8521	10223	8595	10298
8365	9972	8438	10050	8522	10224	8596	10299
8366	9973	8439	10051	8523	10225	8597	10300
8367	9974	8440	10052	8524	10226	8598	10301
8368	9975	8441	10053	8525	10227	8599	10302
8369	9976	8442	10054	8526	10228	8600	10303
8370	9977	8443	10055	8527	10229	8600½	10304
8371	9978	8445	10126	8528	10230	8601	10305
8372	9979	8446	10127	8529	10231	8602	10306
8373	9980	8447	10128	8530	10232	8603	10307
8374	9981	8448	10129	8531	10233	8604	10308
8375	9982	8449	10130	8532	10234	8605	10309
8376	9983	8450	10131	8533	10235	8606	10310
8377	9984	8452	10133	8534	10236	8607	10311
8378	9985	8453	10134	8535	10237	8608	10312
8379	9986	8454	10135	8536	10238	8609*	10313
8380	9987	8455	10136	8537	10239	8610	10314
8381	9988	8456	10137	8538	10240	8611	10315
8382	9989	8457	10138	8539	10241	8612	10316
8383	9990	8458	10139	8540	10242	8613	10317
8384	9991	8459	10140	8541	10243	8614	10318
8385	9992	8460	10141	8542	10244	8615	10319
8385-1*	9993	8461	10142	8543	10245	8616	10323
8385-2	9994	8462	10143	8544	10246	8617	10324
8385-3	9995	8463	10144	8545	10247	8618*	10325
8385-4	9996	8464	10145	8546	10248	8619	10326
8385-5	9997	8465	10146	8547	10249	8620	10327

REMINGTON & BALLINGER AND REMINGTON CODES CROSS-REFERENCES.

Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein	Rem. Code	Herein
8621*	10328	8626-64	10400	8683	10481	8745	10550
8622*	10329	8626-65	10401	8684	10482	8746	10551
8622½*	10330	8626-66	10402	8685	10483	8747	10552
8623	10331	8626-67	10403	8686	10484	8748	10553
8624*	10332	8626-68	10404	8687	10485	8749	10554
8625*	10333	8626-69	10405	8687-1	10486	8750	10555
8626*	10334	8626-70	10406	8687-2	10487	8751	10556
8626-1	10339	8626-71	10407	8687-3	10488	8752	10557
8626-4	10340	8626-72	10408	8687-4	10489	8753	10558
8626-5	10341	8626-73	10409	8687-5	10490	8754	10559
8626-6	10342	8626-74	10410	8688	10491	8755	10560
8626-7	10343	8626-75	10413	8689	10492	8756	10561
8626-8	10344	8626-76	10414	8690	10493	8757	10562
8626-9	10345	8626-77	10415	8717	10494	8758	10563
8626-10	10346	8626-78	10416	8718	10495	8759	10564
8626-11	10347	8626-79	10421	8719	10496	8760	10565
8626-12	10348	8626-80	10422	8720	10497	8761	10566
8626-13	10349	8626-81	10423	8721	10498	8761½	10567
8626-14	10350	8626-82	10424	8722	10499	8762	10568
8626-15	10351	8626-83	10425	8723	10500	8763	10569
8626-16	10352	8626-84	10426	8724	10501	8764	10570
8626-17	10353	8626-85	10427	8725	10502	8765	10571
8626-18	10354	8626-86	10428	8726	10503	8766	10572
8626-19	10355	8626-87	10429	8727	10504	8767	10573
8626-20	10356	8626-88	10430	8728	10505	8768	10574
8626-21	10357	8626-89	10431	8730	10507	8769	10575
8626-22	10358	8626-90	10432	8731	10508	8770	10576
8626-23	10359	8626-91	10433	8732	10509	8771	10577
8626-24	10360	8626-92	10441	8733	10510	8772	10578
8626-25*	10361	8626-93	10442	8733-1	10511	8773	10579
8626-26	10362	8626-94	10443	8733-2	10512	8774	10580
8626-27	10363	8626-95	10444	8733-3	10513	8777	10592
8626-28	10364	8626-96	10445	8733-4*	10514	8778	10593
8626-29	10365	8626-97	10446	8733-5	10515	8779	10594
8626-30	10366	8626-98	10447	8733-6*	10516	8780	10595
8626-31	10367	8626-99	10448	8733-7	10517	8781	10596
8626-32	10368	8626-100	10449	8733-8	10518	8782	10597
8626-33	10369	8626-101	10450	8733-9	10519	8783	10598
8626-34	10370	8626-102	10451	8733-10	10520	8784	10599
8626-35	10371	8626-103	10452	8733-11	10521	8785	10600
8626-36	10372	8626-104	10453	8733-12	10522	8786*	10601
8626-37	10373	8626-105	10454	8733-13	10523	8787	10603
8626-38	10374	8626-107	10455	8733-14	10524	8788	10604
8626-39	10375	8626-108	10456	8733-15	10525	8789	10605
8626-40	10376	8626-110	10457	8733-16	10526	8790	10606
8626-41	10377	8626-111	10458	8733-17	10527	8791	10607
8626-42	10378	8626-112	10459	8733-18	10528	8792	10608
8626-43	10379	8662	10460	8733-19	10529	8793	10609
8626-44	10380	8663	10461	8733-20	10530	8794	10610
8626-45	10381	8664	10462	8733-21	10531	8795	10611
8626-46	10382	8665	10463	8733-22	10532	8796	10612
8626-47	10383	8666	10464	8734	10533	8797	10613
8626-48	10384	8667	10465	8735	10534	8798	10614
8626-49	10385	8668	10466	8736	10535	8799	10615
8626-50	10386	8669	10467	8737	10536	8800	10616
8626-51	10387	8670	10468	8738	10537	8801	10617
8626-52	10388	8671	10469	8739	10538	8802	10618
8626-53	10389	8672	10470	8740	10539	8803	10619
8626-54	10390	8673	10471	8741	10540	8804	10620
8626-55	10391	8674	10472	8742	10541	8805	10621
8626-56	10392	8675	10473	8742-1	10542	8806	10622
8626-57	10393	8676	10474	8742-2	10543	8807	10623
8626-58	10394	8677	10475	8742-3	10544	8808	10624
8626-59	10395	8678	10476	8742-4	10545	8809	10625
8626-60	10396	8679	10477	8742-5	10546	8810	10626
8626-61*	10397	8680	10478	8742-6	10547	8811	10627
8626-62	10398	8681	10479	8743	10548	8812	10628
8626-63	10399	8682	10480	8744	10549	8813	10629

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8816	10632	8884	10705	8953	10918	9017	11011
8817	10633	8885	10706	8954	10919	9018	11012
8818	10634	8886	10707	8955	10920	9019	11013
8819	10635	8887	10708	8956	10921	9020	11014
8820	10636	8888	10709	8957	10933	9021	11015
8821	10637	8889	10710	8958	10934	9023	11016
8822	10638	8890	10711	8959	10935	9024	11017
8823	10639	8891	10712	8960	10936	9025	11018
8824	10640	8892	10713	8961	10937	9026	11019
8825	10641	8893	10714	8962	10938	9026½	11021
8826	10642	8894	10715	8963	10939	9027	11022
8827	10643	8895	10716	8965*	10923	9028	11023
8828	10644	8896	10717	8967*	10926	9029	11024
8829	10645	8897	10718	8967-2	10940	9030	11025
8830	10646	8898	10719	8968	10953	9031	11026
8831	10647	8899	10720	8969	10954	9032	11027
8832	10648	8900	10721	8970	10955	9033	11028
8833	10649	8901	10722	8971	10956	9034	11029
8834	10650	8902	10723	8972	10957	9035*	11030
8835	10651	8903	10724	8973	10958	9036	11031
8836	10652	8904	10725	8974	10959	9037	11032
8837	10653	8905	10726	8974-1	10960	9038	11033
8838	10654	8906	10727	8974-2	10961	9039	11034
8839	10655	8907	10728	8974-3	10962	9040	11035
8840	10656	8908-1	10729	8974-4	10963	9041	11036
8841*	10657	8908-2	10730	8974-5	10964	9042	11037
8842	10663	8908-3	10731	8975	10965	9042½	11038
8843	10664	8908-4	10732	8976	10966	9043	11039
8844	10665	8909	10733	8977	10967	9043-1	11040
8845	10666	8911	10734	8978	10968	9044	11041
8846	10667	8912	10735	8979	10969	9045	11042
8847	10668	8913	10736	8980	10970	9046	11043
8848	10669	8914*	10737	8981	10971	9047	11044
8849	10670	8915*	10738	8982	10972	9048* }	11053
8850	10671	8916*	10739	8983*	10973	9052* }	
8851	10672	8917*	10740	8984	10975	9049	11054
8852	10673	8918*	10741	8985	10976	9050	11045
8853	10674	8919*	10742	8986	10980	9050-1	11046
8854	10675	8920*	10743	8987	10981	9051	11048
8855	10676	8921	10749	8988	10982	9053	11049
8856	10677	8922	10750	8989*	10983	9054	11050
8857	10678	8923	10751	8990	10984	9055	11051
8858	10679	8924	10752	8991	10985	9056	11052
8859	10680	8925*	10753	8992	10986	9057	11055
8860	10681	8926	10754	8993	10987	9058	11056
8861	10682	8927	10755	8994	10988	9059	11057
8862	10683	8928	10756	8995	10989	9060	11058
8863	10684	8929*	10757	8996	10990	9061	11059
8864	10685	8930	10758	8997	10991	9062	11060
8865	10686	8933	10899	8998	10992	9063	11061
8866	10687	8934	10900	8999	10993	9064	11062
8867	10688	8935	10901	9000	10994	9065	11063
8868	10689	8936	10902	9001	10995	9066*	11064
8869	10690	8937	10903	9002	10996	9067	11065
8870	10691	8938	10904	9003	10997	9068	11066
8871	10692	8939	10905	9004	10998	9069	11067
8872	10693	8940	10906	9005	10999	9070	11072
8873	10694	8941	10907	9006	11000	9071	11073
8874	10695	8942	10908	9007	11001	9072	11074
8875	10696	8943	10909	9008	11002	9073	11075
8876	10697	8944	10910	9009	11003	9074	11076
8877	10698	8946	10911	9010	11004	9075	11077
8878	10699	8947	10912	9011	11005	9076	11078
8879	10700	8948	10913	9012	11006	9077	11079
8880	10701	8949	10914	9013	11007	9078	11080
8881	10702	8950	10915	9014	11008	9079	11081

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9082	11084	9148	11167	9218	11241	9281	11319
9083	11085	9149	11168	9219*	11252	9282	11320
9085	11088	9150	11169	9220	11253	9283	11321
9086	11089	9151*	11170	9221	11254	9284	11322
9086-1	11090	9152	11171	9222	11255	9285	11323
9087	11091	9153	11172	9222-1	11256	9286	11324
9088	11092	9154	11173	9223	11257	9287	11325
9090	11096	9155	11174	9223a	11258	9288	11326
9091	11097	9156	11175	9223-1*	11259	9289	11327
9092	11098	9157	11176	9223-2	11260	9290	11328
9093	11099	9158	11177	9224	11261	9291	11329
9094	11100	9159	11178	9225	11262	9292	11330
9095	11101	9160	11179	9226	11263	9293	11331
9096	11102	9161	11180	9227	11264	9294	11332
9097	11103	9162	11181	9228	11265	9295	11333
9098	11104	9163	11182	9229	11266	9296	11334
9099	11105	9164	11183	9230	11267	9297	11335
9099-1	11106	9165	11184	9231	11268	9298	11336
9099-2	11107	9166	11185	9232	11269	9299	11337
9100	11108	9167	11186	9233	11270	9300	11338
9101	11109	9168	11187	9234	11271	9301	11339
9102	11110	9169	11188	9235	11272	9302	11340
9102½	11111	9170	11189	9236	11273	9303	11341
9103	11112	9171	11190	9237	11274	9304	11342
9104	11113	9172	11191	9238	11275	9305	11343
9105	11114	9173	11192	9238-1	11276	9306	11344
9106	11115	9174	11193	9239	11277	9307	11345
9107	11116	9175	11194	9240	11278	9308	11346
9108	11117	9176	11195	9241	11279	9309	11347
9109	11118	9177	11196	9242	11280	9310	11348
9110	11119	9178	11197	9243	11281	9311	11349
9111	11120	9179	11198	9244	11282	9312	11350
9112*	11121	9180	11199	9245	11283	9313	11351
9113	11122	9181*	11200	9246	11284	9314	11352
9114	11123	9182*	11201	9247	11285	9315	11353
9115	11124	9183*	11202	9248	11286	9316	11354
9116	11125	9184	11203	9249	11287	9317	11355
9117	11126	9185	11204	9250	11288	9318	11356
9118	11127	9188*	11205	9251	11289	9319	11357
9119	11128	9189	11207	9252*	11290	9320	11358
9120	11129	9190	11208	9253*	11291	9322	11360
9121	11130	9191	11209	9254	11292	9323	11361
9122	11131	9192*	11210	9255	11293	9324	11362
9123	11132	9193*	11211	9256	11294	9325	11363
9124	11133	9194	11212	9257*	11295	9326	11364
9125	11134	9195*	11213	9258	11296	9327	11365
9126	11135	9196	11214	9259*	11297	9328	11366
9127	11136	9197	11215	9260	11298	9329	11367
9128	11137	9198	11217	9261	11299	9330	11368
9129	11138	9199*	11218	9262*	11300	9331	11369
9130	11139	9200	11219	9263	11301	9332	11370
9131	11140	9202	11220	9264	11302	9333	11371
9132*	11141	9203	11221	9265	11303	9334	11372
9133	11142	9204*	11222	9266	11304	9335	11373
9134	11143	9205	11223	9267	11305	9336	11374
9135	11144	9206	11224	9268	11306	9337	11375
9136	11145	9207	11225	9269	11307	9338	11376
9137	11146	9208	11229	9270	11308	9339	11377
9138	11147	9209	11230	9271	11309	9339½*	11378
9139	11148	9210	11231	9272	11310	9340	11379
9140	11149	9211*	11232	9273	11311	9341	11380
9141	11160	9212*	11234	9274	11312	9342	11381
9142	11161	9213	11235	9275	11313	9343	11382
9143	11162	9214	11236	9276	11314	9344	11383
9144	11163	9214½	11237	9277	11315	9345	11384
9145	11164	9215	11238	9278	11316	9346	11385

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9350	11389	9405	11447	9459	11505	9503-15	11563
9351	11390	9406	11448	9460	11506	9503-16	11564
9352	11391	9406-1	11449	9461	11507	9503-17	11565
9353	11392	9407	11450	9462	11508	9504	11570
9354	11393	9408	11451	9463	11509	9505	11571
9355	11394	9409	11452	9464	11510	9506	11572
9356	11395	9410	11453	9465	11511	9507	11573
9357	11396	9411	11454	9466	11512	9508	11574
9358	11397	9412	11455	9467	11513	9509	11575
9359	11398	9413	11456	9468	11514	9510	11576
9360	11399	9414	11457	9469	11515	9510-1	11579
9361	11400	9415	11458	9470	11516	9510-2	11580
9362	11401	9416	11459	9471	11517	9510-3	11581
9363	11402	9417	11460	9472	11518	9510-4	11582
9364	11403	9418	11461	9473	11519	9510-5	11583
9365	11404	9419	11462	9474	11520	9510-6	11584
9366	11405	9420	11463	9475	11521	9510-7	11585
9367	11406	9421	11464	9476	11522	9510-8	11586
9368*	11407	9422	11465	9477	11523	9510-9	11587
9369	11408	9423	11466	9478	11524	9510-10	11588
9370	11409	9424	11467	9479	11525	9510-11	11589
9371	11410	9425	11468	9480	11526	9510-12	11590
9372	11411	9426	11469	9481	11527	9510-13	11591
9373	11412	9427	11470	9482	11528	9510-14	11592
9373-1	11413	9428	11471	9483	11529	9510-15	11593
9373-2	11414	9429	11472	9484	11530	9510-16	11594
9374	11415	9430	11473	9485	11531	9510-17	11595
9375	11416	9431	11474	9486	11532	9510-18	11596
9376	11417	9432	11475	9487	11533	9510-19	11597
9377	11418	9433	11476	9489	11534	9510-20	11598
9378	11419	9434	11477	9490	11535	9510-21	11599
9379	11420	9435	11478	9491	11536	9510-22	11600
9380	11421	9436	11479	9492	11537	9510-23	11601
9381	11422	9436-1	11480	9493	11538	9511-1	11603
9382	11423	9436-2	11481	9494	11539	9511-2*	11605
9383	11424	9436-3	11482	9495	11540	9511-3*	11606
9384	11425	9437	11483	9496	11541	9511-4*	11607
9385	11426	9438	11484	9497	11542	9511-5*	11608
9386	11427	9439	11485	9498	11543	9511-6	11609
9387	11428	9440	11486	9499	11544	9511-7	11610
9388	11429	9441	11487	9500	11545	9511-8	11611
9389	11430	9442	11488	9501	11546	9511-9	11612
9390	11431	9443	11489	9502	11547	9511-10	11613
9391	11432	9444	11490	9503	11548	9511-11	11618
9392	11433	9445	11491	9503-1	11549	9524	11619
9392-1	11434	9446	11492	9503-2	11550	9525	11620
9393	11435	9447	11493	9503-3	11551	9526	11621
9394	11436	9448	11494	9503-4	11552	9527	11622
9395	11437	9449	11495	9503-5	11553	9528	11623
9396	11438	9450	11496	9503-6	11554	9529	11624
9397	11439	9451	11497	9503-7	11555	9530	11625
9398	11440	9452	11498	9503-8	11556	9531	11626
9399	11441	9453	11499	9503-9	11557	9532	11627
9400	11442	9454	11500	9503-10	11558	9533	11628
9401	11443	9455	11501	9503-11	11559		

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23	1	6493	79	1	1734	128	1	7299
23	1	10495	80	1	2829	128	2	7300
26	1	3934	80	2	2830	129	3	7301
26	1	3957	81	3	2831	129	4	7302
34	1	7599	81	4	2832	129	5	7303
35	1	102	81	5	2833	129	6	457
36	1	10247	82	6	2834	129	7	7304
37	2	10248	82	7	2835	130	8	7305
37	3	10249	82	8	2836	132	1	4587
40	1	8255	83	9	2837	132	1	7981
40	2	8256	83	10	2838	135	1	7564
40	3	8257	84	1	9296	135	2	8992
41	4	8258	85	1	1121	136	4	8994
41	1	9204	87	4	583	136	5	8995
41	2	9205	87	5	584	136	7	8997
42	3	9206	87	6	591	136	8	8998
42	4	9207	89	7	594	136	9	8999
42	5	9208	89	8	595	137	11	9000
42	6	9209	89	9	596	138	1	7979
43	1	11284	90	10	597	139	2	7982
43	2	11285	91	11	598	141	1	11622
44	3	11286	91	12	599	141	2	11623
44	1	3764	92	13	600	141	3	11624
45	2	3765	93	14	601	143	1	1173
45	3	3766	93	15	602	144	1	188
46	4	3767	94	16	603	146	1	613
46	5	3768	95	17	604	146	2	636
47	1	8074	100	1	3855	147	2	11085
47	7	3771	101	2	3856	148	1	3928
48	2	8075	102	1	8937	148	1	3943
48	3	8076	103	1	8889	148	1	3948
49	2	10481	105	1	7843	155	1	10595
49	3	10482	107	2	9948	156	1	9346
52	1	3075	109	1	151	156	2	9347
61	11	6248	110	2	152	157	3	9348
65	27	6249	112	1	8944	157	4	9349
66	28	6250	113	2	8945	157	5	9350
66	30	6251	114	3	8946	157	1	3779
67	1	5540	115	2	9474	158	2	3781
68	3	5542	115	3	9475	158	3	3782
68	4	5543	116	4	9476	159	4	3783
69	1	8622	116	5	9477	159	5	3784
69	2	8623	117	1	6109	159	6	3785
69	5	5544	117	2	6110	159	7	3786
69	6	5545	117	3	6111	160	8	3787
70	3	8624	118	4	6112	161	1	7028
70	4	8625	118	5	6113	162	2	7029
70	5	8626	118	1	10597	162	3	7030
70	6	8627	119	2	10598	162	4	7031
71	7	8628	120	1	7969	163	1	7642
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71	9	8630	120	3	7971	163	3	7644
72	11	8632	122	1	2709	164	1	7531
72	12	8633	122	2	2709	164	2	7532
73	13	8634	126	1	9195	164	3	7533
73	14	8635	127	2	9196	164	4	7534

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165	8	7538	304	28	11309	352	66	3457
166	9	7539	305	30	11316	353	67	3458
166	10	7540	305	31	11317	353	68	3459
167	11	7541	340	1	3392	353	69	3460
167	12	7542	340	2	3393	353	70	3461
168	13	7543	340	3	3394	353	71	3462
168	1	9176	341	4	3395	354	72	3463
171	3	6620	341	5	3396	354	73	3464
174	1	3830	341	6	3397	354	74	3465
175	1	4603	342	7	3398	354	75	3466
176	1	10758	342	8	3399	354	76	3467
186	1	2705	342	9	3400	354	77	3468
186	2	2706	342	10	3401	355	78	3469
186	3	2707	343	11	3402	355	79	3470
187	1	4240	343	12	3403	355	80	3471
216	1	10126	343	13	3404	355	81	3472
216	2	10127	343	14	3405	355	82	3473
217	3	10128	343	15	3406	355	83	3474
219	9	10134	344	16	3407	355	84	3475
220	11	10136	344	17	3408	355	85	3475½
222	14	10139	345	18	3409	356	86	3476
223	16	10141	345	19	3410	356	87	3477
234	1	9515	345	20	3411	356	88	3478
235	2	9516	345	21	3412	356	89	3479
236	3	9517	345	22	3413	356	90	3480
236	4	9518	345	23	3414	356	91	3481
236	5	9519	346	24	3415	356	92	3482
237	6	9520	346	25	3416	357	93	3483
238	7	9521	346	26	3417	357	94	3484
238	8	9522	346	27	3418	357	95	3485
238	9	9523	346	28	3419	357	96	3486
239	10	9524	346	29	3420	357	97	3487
239	11	9525	347	30	3421	357	98	3488
239	1	4394	347	31	3422	357	99	3489
239	2	4395	347	32	3423	357	100	3490
240	3	4217	347	33	3424	358	101	3491
240	4	4397	347	34	3425	358	102	3492
241	5	4398	347	35	3426	358	103	3493
241	6	4399	347	36	3427	358	104	3494
242	7	4400	348	37	3428	358	105	3495
242	8	4401	348	38	3429	358	106	3496
243	9	4402	348	39	3430	359	107	3497
243	10	4403	348	40	3431	359	108	3498
243	11	4404	348	41	3432	359	109	3499
272	1	8058	348	42	3433	359	110	3500
273	2	8059	349	43	3434	359	111	3501
273	3	8060	349	44	3435	359	112	3502
273	4	8061	349	45	3436	359	113	3503
274	5	8062	349	46	3437	360	114	3504
274	6	8063	349	47	3438	360	115	3505
274	7	8064	349	48	3439	360	116	3506
275	8	8065	349	49	3440	360	117	3507
275	9	8066	349	50	3441	360	118	3508
275	10	8067	350	51	3442	360	119	3509
275	11	8068	350	52	3443	361	120	3510
276	2	5854	350	53	3444	361	121	3511
276	3	5855	350	54	3445	361	122	3512
276	4	5856	350	55	3446	362	123	3513
289	5	11223	350	56	3447	362	124	3514
291	7	11257	350	57	3448	362	125	3515
291	8	11261	351	58	3449	362	126	3516
292	9	11265	351	59	3450	362	127	3517
293	10	11266	351	60	3451	363	128	3518
294	11	11271	351	61	3452	363	129	3519
295	12	11273	351	62	3453	363	130	3520

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363	133	3523	367	155	3545	370	177	3567
364	134	3524	368	156	3546	370	178	3568
364	135	3525	368	157	3547	371	179	3569
364	136	3526	368	158	3548	371	180	3570
364	137	3527	368	159	3549	371	181	3571
364	138	3528	368	160	3550	371	182	3572
364	139	3529	368	161	3551	371	183	3573
364	140	3530	369	162	3552	371	184	3574
364	141	3531	369	163	3553	371	185	3575
365	142	3532	369	164	3554	372	186	3576
365	143	3533	369	165	3555	372	187	3577
365	144	3534	369	166	3556	372	188	3578
365	145	3535	369	167	3557	372	189	3579
366	146	3536	369	168	3558	372	190	3580
366	147	3537	370	169	3559	372	191	3581
366	148	3538	370	170	3560	373	192	3582
366	149	3539	370	171	3561	373	193	3583
367	150	3540	370	172	3562	373	194	3584
367	151	3541	370	173	3563	373	195	3585
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13	1	9940	134	4	7589	202	4	6463
20	1	1178	134	5	7590	203	5	6464
21	1	1182	135	6	7591	203	6	6465
23	1	1236	135	7	7592	215	1	11073
23	2	1237	135	9	7593	215	2	11074
24	3	1238	136	1	1184	215	3	11075
25	1	2716	137	2	1185	218	1	8028
25	2	2717	137	3	1186	218	2	8029
28	1	1716	146	21	3152	218	3	8030
29	2	1729	147	22	3153	219	5	8032
30	3	1730	167	1	11122	219	6	8033
64	1	10614	170	1	5524	220	8	8035
65	1	10563	172	4	5526	222	1	5832
68	3	11203	173	1	8350	223	2	5833
72	11	11209	174	2	8351	224	3	5834
74	16	11214	174	3	8352	224	4	5835
76	1	41	175	1	9297	224	5	5836
77	2	42	176	2	9298	226	1	4262
92	3	8142	176	3	9299	228	2	3114
93	4	8143	176	4	9300	229	3	3119
93	5	8144	183	1	4019	236	1	6001
93	6	8145	183	2	4020	237	2	6002
93	7	8146	183	3	4021	238	3	6015
96	5	6129	184	5	4023	238	1	9526
96	6	6130	185	6	4024	239	2	9527
96	7	6131	185	7	4025	239	3	9528
98	1	7808	186	1	5274	254	8	10904
98	2	7809	190	1	6503	254	10	10906
98	3	7810	190	2	6504	256	12	10909
99	4	7811	190	3	6505	257	14	10915
99	5	7812	191	4	6506	257	15	10917
99	6	7813	191	5	6507	258	16	10918
99	7	7814	191	6	6508	258	1	8612
105	1	1756	191	7	6509	259	2	8613
105	2	1757	192	1	8110	259	3	8614
118	1	7650	192	1	6428	259	1	7404
119	2	7616	192	2	6429	260	2	7405
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262	2	2701	304	9	3192	348	1	10734
262	1	8390	304	10	3193	349	1	8277
263	2	8391	305	11	3194	349	2	8278
263	3	8392	305	12	3195	350	6	8279
263	4	8393	305	13	3196	350	7	8280
264	5	8394	306	14	3197	350	8	8281
265	1	11123	306	15	3198	350	9	8282
265	2	11124	306	16	3199	350	10	8283
265	3	11125	306	17	3200	351	11	8284
272	1	4184	307	18	3201	351	12	8285
281	7	5859	307	1	3761	351	13	8286
282	8	5860	308	2	8762	351	14	8287
287	6	5291	308	3	3762	352	15	8288
288	7	5326	308	4	3763	353	2	8089
288	8	5328	313	2	8023	354	3	8090
292	1	8631	314	4	8026	354	4	8091
294	1	7983	314	1	10030	355	5	8092
298	1	5388	315	2	10032	355	6	8093
299	1	11572	316	3	10033	355	7	8094
299	2	11573	316	4	10035	366	1	7974
300	3	11574	317	5	10038	366	2	7975
300	1	8374	326	1	7963	366	3	7976
302	1	3184	334	1	5993	366	4	7977
302	2	3185	334	2	5994	367	5	7978
302	3	3186	335	3	5995	383	1	11292
303	4	3187	335	4	5996	386	4	11306
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7	1	115	39	1	1746	70	1	4002
10	1	499	42	1	4339	71	1	7667
13	1	4125	47	1	652	71	2	7668
14	2	4126	49	1	11625	71	3	7669
18	1	1762	49	2	11626	71	4	7670
19	2	1763	50	2	317	72	5	7671
19	3	1764	51	1	7645	72	6	7672
21	3	9619	51	2	7646	73	1	11310
26	1	167	51	3	7647	74	3	11272
29	3	3118	53	1	8195	74	4	11299
31	1	7342	54	2	5929	76	5	11311
31	2	7343	54	3	5930	82	2	1813
32	3	7344	58	1	1700	83	2	6093
32	4	7345	60	2	1701	84	5	6096
32	5	7346	60	3	1702	84	6	6097
34	1	8993	61	4	1703	86	1	6003
34	2	8996	61	5	1704	87	1	4492
35	1	9185	62	6	1705	87	2	4493
37	1	7815	62	7	1706	88	3	4494
38	1	8344	62	8	1707	89	4	4495

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90	7	4498	195	8	913	275	18	9646
90	8	4499	196	9	914	276	19	9647
91	9	4500	196	10	915	276	20	9648
91	1	686	196	11	916	277	22	9650
91	2	687	196	12	917	277	1	229
92	1	10755	196	13	918	278	2	230
92	2	10756	197	14	919	278	3	231
99	2	8266	197	15	920	278	4	232
100	3	8268	202	4	9164	282	1	689
101	4	8269	202	5	9165	286	1	1187
105	1	10995	202	6	9166	299	1	7923
107	1	5084	221	1	6437	299	2	7924
108	2	5085	222	2	6438	299	3	7925
108	3	5086	222	3	6439	300	4	7926
108	4	5087	222	4	6440	300	5	7927
108	5	5088	225	13	6406	301	6	7928
109	1	10309	225	14	6407	301	7	7929
109	2	10310	225	15	6408	302	8	7930
110	3	10311	226	16	6409	302	9	7931
110	4	10312	227	17	6410	303	10	7932
110	6	10314	227	1	9177	303	11	7933
111	7	10315	235	3	3128	303	12	7934
111	8	10316	238	1	7854	304	13	7935
111	9	10317	239	2	7855	305	14	7936
112	10	10318	239	3	7856	305	15	7937
112	11	10319	239	4	7857	306	16	7938
113	1	7869	239	5	7858	308	17	7939
114	3	7879	245	1	10567	308	18	7940
115	4	7880	256	1	5890	308	19	7941
115	5	7886	257	2	5891	309	20	7942
116	7	7892	257	4	5892	309	21	7943
116	8	7893	257	5	5893	309	22	7944
118	1	3865	258	6	5894	309	23	7945
118	2	3866	259	2	6286	329	15	5063
118	3	3867	259	3	6287	331	1	5998
119	4	3868	259	4	6288	338	1	11294
124	1	3806	259	5	6289	339	1	11235
124	1	5339	259	6	6290	340	2	5776
135	1	564	259	7	6291	344	1	3712
136	1	4026	260	8	6292	345	2	3713
136	2	4027	260	9	6293	345	3	3714
137	1	7844	260	10	6294	347	4	3715
138	2	7845	262	1	797	352	2	8208
138	3	7846	262	2	798	352	3	8213
139	1	7854	262	3	799	352	4	8214
139	2	9312	264	1	10271	353	5	8215
139	3	9313	264	2	10272	354	6	8216
140	4	9314	264	3	10273	354	7	8217
140	5	9315	264	4	10274	354	8	8218
140	7	9317	267	1	8790	355	9	8219
140	8	9317	270	1	9629	355	10	8220
140	9	9318	270	2	9630	355	10 Subd. 1	8221
141	1	3703	271	3	9631	355	10 Subd. 2	8222
155	1	6426	271	4	9632	356	10 Subd. 3	8223
156	2	6427	271	5	9633	357	10 Subd. 4	8224
188	1	10991	272	6	9634	357	10 Subd. 5	8225
192	1	6926	272	7	9635	360	1	5430
192	2	6927	272	8	9636	362	3	5431
193	3	6928	272	9	9637	366	2	11082
193	4	6929	273	10	9638	366	3	11083
193	1	906	273	11	9639	377	1	8259
194	2	907	273	12	9640	378	2	8260
194	3	908	273	13	9641	378	3	8261
194	4	909	273	14	9642	378	4	8262
195	5	910	275	15	9643	379	1	11104

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27	1	3805	116	9	7954	232	1	8410
32	1	482	117	10	7955	235	1	10920
33	1	1632	119	11	7956	235	3	10921
39	1	1980	119	12	7957	239	1	3876
40	2	1981	119	13	7958	239	3	10471
40	3	1986	119	14	7959	239	4	10472
41	1	1910	119	15	7960	240	1	10474
44	1	3154	120	1	7348	240	2	10475
45	2	3155	123	1	3769	241	3	10476
45	4	3157	133	1	4655	241	4	10477
46	6	3159	133	2	4658	241	5	10478
46	7	3160	137	2	1155	241	6	10479
47	8	3161	138	3	1156	243	1	11236
47	10	3163	138	4	1157	244	1	3291
48	12	3165	138	5	1158	245	2	3292
48	13	3166	140	1	9210	247	1	5862
48	14	3167	161	1	8395	247	2	5863
48	15	3168	161	2	8396	248	3	5864
50	1	1247	162	3	8397	252	1	6817
50	1	4075	162	4	8398	252	1	11289
51	1	3810	165	2	7659	252	2	11255
53	1	9340	165	3	7660	259	1	6140
53	3	9342	166	6	7663	259	2	6141
54	4	9343	169	12	7666	266	1	1261
61	1	9331	173	1	812	269	1	11333
62	2	9332	174	2	814	275	14	105
63	1	10234	175	3	820	282	1	4501
63	2	10235	176	4	821	283	2	4502
64	3	10236	179	2	4276	283	3	4503
64	1	5272	180	1	7408	284	4	4504
65	2	5329	180	2	7409	285	5	4505
73	1	5520	180	3	7410	286	6	4506
73	2	5521	182	4	7411	287	7	4507
73	3	5522	182	5	7412	287	8	4508
73	4	5523	183	6	7413	288	9	4509
76	1	{ 10232	184	8	7415	288	10	4510
77	1	{ 10233	185	1	3926	289	11	4511
78	2	6868	185	1	3944	290	12	4512
78	2	6869	185	1	3963	290	13	4513
79	1	6142	197	2	6252	290	14	4514
79	2	6143	197	3	6253	290	15	4515
83	1	4567	197	7	6254	290	16	4516
108	1	8411	203	1	11034	296	1	1696
110	1	5825	207	1	5568	298	1	11322
111	1	8204	207	3	5570	330	2	11065
111	2	8205	208	1	9649	330	3	11066
111	3	8206	209	1	7570	331	4	11067
111	4	8207	209	3	7572	332	5	11072
112	1	4177	210	1	6431	332	1	10323
112	2	4178	211	2	6432	333	2	10324
112	3	4179	212	3	6433	333	4	10326
113	1	7946	215	1	3807	333	5	10327
113	2	7947	219	1	7594	336	7	10331
114	3	7948	227	3	11089	338	1	3124
114	4	7949	227	4	11091	339	1½	3127
114	5	7950	228	5	11092	349	5	5134
115	6	7951	229	1	1129	349	1	5857

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351	5	5865	360	1	4300	377	4	10499
351	7	5911	362	2	4307	377	5	10500
352	8	5904	372	1	8347	377	6	10501
353	12	5902	372	2	8348	378	7	10502
353	13	5898	373	3	8349	378	8	10503
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14	1	1162	76	5	5566	146	4	6021
17	2	5537	76	6	5567	147	5	6022
17	3	5538	76	1	8400	147	6	6023
17	4	5539	78	1	3100	149	7	6024
18	1	5444	78	2	3101	149	8	6025
18	2	5447	79	1	11180	150	9	6026
24	2	6424	79	2	11181	150	10	6027
25	3	6425	80	3	11182	150	11	6028
25	1	7652	80	4	11183	150	12	6029
26	2	7653	80	5	11184	151	13	6030
27	1	5571	81	6	11185	151	14	6031
28	3	5573	81	7	11186	152	15	6032
28	4	5574	82	8	11187	152	16	6033
32	1	11287			497	153	17	6034
32	2	11288			4105	153	18	6035
33	1	2173	88	1	4185	154	19	6036
33	2	2174			4217	155	20	6037
33	3	2175			4229	156	21	6038
34	4	2176			7561	157	22	6039
34	5	6969	94	1	9907	159	1	2756
35	6	6970			10993	159	2	2757
36	7	6971	95	1		159	3	2758
36	8	6972	99	1	2149	159	4	2759
37	9	6973	99	2	2150	160	5	2763
37	10	6974	100	1	9341	160	6	2764
43	1	8209	101	1	4338	160	7	2765
45	1	2761	107	1	4214	161	8	2766
46	1	11172	107	2	4215	161	9	6405
46	2	11173	107	3	4213	161	10	2769
47	3	11174	108	4	4216	162	1	6091
47	4	11175	109	1	9625	163	2	6092
48	5	11176	110	3	9627	163	3	6094
48	6	11177	110	4	9628	164	4	6095
49	7	11178	125	1	4478	164	5	6098
49	8	11179	125	2	4479	166	6	6099
50	1	5548	125	3	4480	166	1	9509
51	3	5550	126	4	4481	166	2	9510
51	4	5551	126	5	4482	167	3	9511
52	6	5553	127	1	3878	169	1	10507
53	7	5554	128	2	3883	169	2	10508
53	1	11312	132	1	11160	169	3	10509
54	2	11313	132	2	11161	170	1	8972
54	3	11314	133	3	11162	170	2	8973
55	1	4063	134	4	11163	172	1	296
55	2	4064	134	5	11164	173	1	10276
55	1	11328	136	6	11165	174	1	10976
56	2	11332	137	7	11166	174	2	10976
57	1	8971	137	8	11167	175	1	4243
61	1	11143	138	9	11168	176	2	4253
69	1	11099	138	10	11169	177	3	4254
73	1	1664	139	12	11172	178	4	4255
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181	2	4613	255	6	1361	325	24	9238
182	1	6720	255	7	1362	325	25	9239
185	5	6724	255	8	1363	327	26	9240
186	6	6725	255	1	3888	327	27	9241
186	7	6726	256	2	3889	328	28	9242
186	8	6727	256	3	3890	328	29	9243
187	11	6730	256	4	3891	328	30	9244
188	12	6731	256	5	3892	329	31	9245
188	13	6732	257	6	3893	329	32	9246
189	16	6735	258	7	3894	330	33	9247
189	17	6736	258	8	3895	330	34	9248
189	18	6737	258	9	3896	330	35	9250
189	19	6738	258	10	3897	331	36	9251
189	20	6739	259	11	3898	332	37	9252
191	21	6740	259	12	3899	332	38	9253
191	22	6741	260	13	3900	332	39	9254
192	1	11082	262	1	8196	333	40	9255
194	1	11627	262	2	8197	333	41	9256
194	2	11628	263	3	8198	335	42	9257
200	2	6911	263	4	8199	335	43	9258
201	3	6912	263	5	8200	335	44	9259
201	1	8088	264	6	8201	335	45	9260
205	1	3816	264	1	9899	336	46	9261
206	1	11100	265	1	10480	336	47	9262
206	2	11101	270	1	3836	337	49	9274
206	3	11102	270	2	3837	337	50	9275
212	1	7801	270	3	3838	338	51	9276
212	1	7866	271	4	3839	338	52	9277
218	1	7816	271	5	3840	339	53	9278
218	2	7817	271	6	3841	340	56	9279
220	1	1864	271	7	3842	345	1	10733
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229	2	10041	272	9	3849	348	2	9665
229	3	10042	272	10	3850	349	1	5432
229	4	10043	273	11	3851	350	2	5433
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231	9	10046	289	3	9978	351	3	4146
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231	11	10048	290	5	9980	352	5	4207
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232	16	10053	292	5	9875	375	2	8212
232	17	10054	308	1	6827	376	1	4341
232	18	10055	315	2	7871	376	2	4342
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238	2	7622	318	5	9219	382	6	10903
239	1	11219	318	6	9220	382	7	10905
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250	8	11197	321	14	9228	387	6	10284
251	9	11198	321	16	9230	387	7	10285
251	10	11199	322	17	9231	388	8	10286
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390	14	10290	472	27	5204	594	16	9684
390	15	10291	475	34	5209	594	17	9685
391	16	10292	475	35	5210	594	18	9698
391	17	10293	477	1	703	595	1	8909
392	18	10294	478	1	6144	596	1	8910
392	19	10295	478	2	6145	597	1	8911
392	20	10296	478	3	6146	597	1	8912
393	21	10297	480	4	6147	598	1	8913
393	22	10298	481	5	6148	600	1	6430
394	1	5518	482	6	6149	623	1	9006
394	2	5519	483	7	6150	623	2	9007
398	1	162	483	10	6151	624	4	9009
402	1	10275	483	11	6152	624	5	9010
403	4	3797	484	12	6153	625	6	9011
406	1	11021	485	15	6154	625	7	9012
406	2	4057	498	1	8121	626	8	9013
407	1	5841	501	3	11204	626	9	9014
423	1	4585	502	5	11207	626	10	9015
424	2	4586	502	6	11208	627	11	9016
425	1	9843	503	8	11212	627	12	9017
425	2	9844	503	9	11215	628	13	9018
426	3	9845	503	10	11217	629	14	9019
427	4	9846	506	1	10470	629	15	9020
428	5	9847	506	2	10473	630	16	9021
428	6	9848	507	1	923	631	17	9022
428	7	9849	508	1	11089	631	18	9023
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432	10	9852	516	1	10465	632	21	9026
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434	14	9856	564	1	9199	632	25	9030
434	15	9857	564	2	9200	632	26	9031
435	16	9858	564	3	9201	633	27	9032
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435	18	9860	565	5	9203	634	29	9034
436	19	9861	574	1	5927	642	30	9037
436	20	9862	575	1	6267	643	31	9038
436	21	9863	576	2	6268	643	32	9039
436	22	9864	576	3	6269	643	33	9040
437	23	9865	577	4	6270	644	34	9041
437	24	9866	578	5	6271	644	35	9042
437	25	9867	578	6	6272	644	36	9043
438	26	9868	579	7	6273	644	37	9044
438	27	9869	579	8	6274	652	41	9047
438	28	9870	579	9	6275	652	45	9048
448	1	7658	580	10	6276	652	46	9049
449	2	7661	580	11	6277	653	48	9051
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450	4	7664	580	13	6279	655	50	9053
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455	2	8070	582	1	9669	657	53	9056
456	3	8071	582	2	9670	661	54	9057
456	4	8072	583	3	9671	661	55	9058
457	1	5177	584	4	9672	663	56	9059
457	3	5179	585	5	9673	663	57	9060
459	7	5184	586	6	9674	663	58	9061
460	9	5186	586	7	9675	663	59	9062
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465	14	5191	587	9	9677	663	61	9064
465	15	5192	588	10	9678	663	62	9065
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666	68	9071	705	24	10648	724	71	10700
666	69	9072	705	25	10649	725	72	10701
666	70	9073	705	26	10650	725	73	10702
667	71	9074	706	27	10651	726	74	10703
668	72	9075	706	28	10652	726	75	10704
669	1	4316	707	29	10653	727	76	10705
671	1	9426	707	30	10654	727	77	10706
671	2	9427	708	31	10655	728	78	10707
672	3	9428	709	32	10656	728	79	10708
673	4	9429	709	34	10663	729	80	10709
673	5	9430	710	35	10664	729	81	10710
674	6	9431	711	36	10665	730	82	10711
674	1	10539	711	37	10666	730	83	10712
676	1	8896	711	38	10667	731	84	10713
676	2	8897	712	39	10668	731	85	10714
677	3	8898	712	40	10669	732	86	10715
678	4	8899	712	41	10670	733	87	10716
678	5	8900	712	42	10671	733	88	10717
679	6	8901	713	43	10672	734	89	10718
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693	1	10622	714	45	10674	734	91	10720
693	2	10623	714	46	10675	735	92	10721
694	3	10624	714	47	10676	735	93	10722
694	4	10625	715	48	10677	735	94	10723
696	5	10626	716	49	10678	736	95	10724
696	6	10627	716	50	10679	737	96	10725
696	7	10628	716	51	10680	737	97	10726
698	8	10629	717	52	10681	738	1	7994
698	9	10630	717	53	10682	738	2	7995
698	10	10631	718	54	10683	738	3	7996
699	11	10632	718	55	10684	739	4	7997
699	12	10633	718	56	10685	739	5	7998
699	13	10634	719	57	10686	742	1	5837
700	14	10635	720	58	10687	742	2	5838
700	15	10636	720	59	10688	743	3	5839
701	15a	10637	721	60	10689	743	4	5840
701	16	10638	721	61	10690	748	1	7835
701	17	10639	721	62	10691	748	2	7836
702	18	10640	722	63	10692	750	4	7980
702	19	10641	722	64	10693	755	7	7872
702	20	10642	723	65	10694	755	8	7999
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17	1	5563	37	1	6828	49	18	6887
18	1	9280	43	1	6870	49	19	6888
18	2	9281	44	2	6871	49	20	6889
19	1	3937	45	3	6872	51	1	10483
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33	2	11039	46	9	6878	53	1	4856
34	3	8	46	10	6879	55	1	806
34	4	9	47	11	6880	56	1	2720
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58	6	10958	138	4	9954	249	17	4597
59	7	10959	138	5	9955	249	18	4598
59	1	9579	139	6	9956	249	19	4599
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60	3	9581	142	9	9959	250	21	4601
60	4	9582	142	10	9960	251	22	4602
61	5	9583	142	11	9961	251	1	4604
61	6	9584	143	12	9962	251	2	4605
62	7	9585	143	13	9963	252	3	4606
62	8	9586	150	1	3991	252	4	4607
62	9	9587	151	1	9273	252	5	4608
63	10	9588	169	1	5178	253	7	4610
63	11	9589	170	2	5182	254	11	4618
63	12	9590	175	5	5190	256	15	4622
64	13	9591	177	8	5205	256	16	4623
64	14	9592	178	9	5206	256	1	4624
65	1	5572	179	10	5208	256	2	4625
66	1	10164	180	12	5213	257	3	4626
67	3	10165	181	1	9478	257	4	4627
67	4	10166	182	3	9480	257	5	4628
68	5	10167	183	1	8210	257	6	4629
68	6	10168	184	1	339	257	7	4630
68	7	10169	186	1	2024	258	1	4644
68	8	10170	188	1	6510	258	2	4646
68	9	10171	190	1	6816	258	3	4647
69	10	10172	190	2	6816	258	4	4648
69	11	10173	227	1	11045	258	5	4649
69	1	206	229	1	6516	258	6	4650
70	1	10981	230	1	4518	259	7	4651
71	1	533	230	2	4519	259	8	4652
71	1	1133	231	1	4521	259	9	4653
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78	7	11443	235	3	4527	260	5	4676
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80	11	11483	238	7	4531	261	1	4680
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98	2	5870	240	4	4555	262	5	4689
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111	1	6816	243	1	4568	264	4	4697
114	1	9620	244	2	4573	264	5	4698
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127	6	7902	248	11	4582	267	4	4724
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269	1	4730	296	19	4809	317	3	4895
269	2	4731	297	20	4810	318	4	4896
270	3	4732	297	1	4811	318	5	4902
270	4	4733	298	2	4812	319	6	4903
271	1	4734	298	3	4813	319	7	4904
271	2	4735	298	4	4814	319	8	4905
271	3	4736	298	5	4815	320	1	4926
271	4	4737	299	6	4816	320	2	4927
272	5	4738	299	7	4817	320	3	4928
272	7	4740	299	8	4818	320	4	4929
273	8	4741	300	9	4819	320	5	4930
273	1	4742	300	10	4820	320	6	4931
273	2	4743	300	11	4821	320	1	4932
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274	5	4746	301	2	4824	322	5	4936
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274	7	4748	301	4	4826	323	7	4938
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275	9	4750	302	6	4828	324	2	4942
275	10	4751	302	7	4829	326	4	4944
275	11	4752	302	8	4830	327	5	4945
276	12	4753	302	9	4831	327	6	4946
276	1	4754	302	10	4832	328	8	4948
276	2	4755	302	11	4833	329	9	4949
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281	4	4770	308	1	4857	335	8	4963
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284	6	4772	308	3	4859	336	2	4967
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287	6	4781	311	1	4868	337	7	4972
287	7	4782	311	2	4869	337	8	4973
288	9	4784	311	3	4870	337	9	4974
288	10	4785	312	1	4871	338	10	4975
288	11	4786	312	2	4872	338	11	4976
289	12	4787	312	3	4873	338	1	4977
289	13	4788	312	4	4874	338	2	4978
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290	2	4791	313	6	4876	343	2	4983
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290	4	4793	313	8	4878	344	4	4985
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291	6	4795	313	10	4880	345	1 (art. 6)	4988
291	8	4797	314	11	4881	345	1 (art. 7)	4990
291	9	4798	314	13	4883	345	1 (art. 9)	4992
291	10	4799	315	2	4885	346	2	4993
292	11	4800	315	3	4886	346	3	4994
292	12	4801	315	4	4887	346	1	5021
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349	7	5027	376	1	5102	426	2	9345
349	1	5028	376	2	5103	427	1	6721
350	2	5029	376	1	5104	428	2	6722
350	3	5030	376	2	5105	431	3	6728
352	1	5037	377	1	46	431	4	6729
353	6	5039	382-3	1-2	8138	432	5	6734
356	11	5040	384	1	4161	433	1	1760
357	1	5043	385	2	4162	433	1	5501
357	2	5044	385	3	4163	435	1	8455
357	3	5045	385	4	4164	435	4	8456
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358	5	5047	385	6	4166	436	6	8458
359	6	5048	386	1	5106	437	7	8459
359	7	5049	386	2	5107	437	8	8460
360	8	5051	386	3	5108	438	9	8461
360	9	5052	386	4	5109	443	22	8472
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361	12	5055	387	1	9433	458	40	8493
361	13	5056	390	1	8116	462	52	8499
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362	17	5060	392	1	8892	468	65	8510
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366	5	5076	400	11	8236	567	3	7575
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367	9	5080	401	15	8240	571	4	9435
368	10	5081	401	16	8241	573	6	9437
368	11	5082	402	17	8242	573	7	9438
368	12	5083	402	18	8243	574	8	9439
368	1	5089	402	19	8244	574	9	9440
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369	4	5092	410	1	9045	576	12	9443
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371	2	5097	415	2	9088	577	17	9448
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374	8	913	420	5	88	584	4	9491
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374	10	915	423	2	9483	588	1	5549
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614	19	1841	685	12	10016	758	2	7852
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637	3	1200	717	3	1161	780	14	6685
638	1	8969	719	2	6004	780	15	6686
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644	1	5913	724	1	9237	782	18	6689
644	2	5914	727	1	10129	783	19	6690
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645	4	5916	728	3	10131	784	21	6692
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651	7	6767	733	10	10143	789	1	4361
652	8	6768	734	11	10144	789	2	4362
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799	12	4372	838	34	11518	900	39	2291
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804	17	4377	840	39	11523	901	45	2297
804	18	4378	841	40	11524	902	46	2298
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805	20	4380	841	42	11526	902	48	2300
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806	22	4382	842	44	11528	902	50	2302
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808	24	4384	842	46	11530	906	52	2304
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808	26	4386	843	48	11532	907	54	2306
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809	31	4391	845	1	4043	908	59	2311
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827	14	11498	894	18	2270	917	88	2340
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922	108	2360	941	176	2428	965	247	2499
922	109	2361	941	177	2429	965	248	2500
922	110	2362	941	178	2430	966	249	2501
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923	113	2365	942	181	2433	966	252	2504
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923	115	2367	942	183	2435	967	254	2506
924	116	2368	943	184	2436	967	255	2507
924	117	2369	943	185	2437	968	256	2508
924	118	2370	943	186	2437	969	257	2509
924	119	2371	943	186	2438	970	258	2510
925	120	2372	944	187	2439	970	259	2511
925	121	2373	944	188	2440	972	264	2516
926	122	2374	945	189	2441	972	265	2517
926	123	2375	946	190	2442	973	266	2518
926	124	2376	948	194	2446	973	267	2519
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927	126	2378	948	196	2448	974	269	2521
927	127	2379	948	197	2449	974	270	2522
927	128	2380	949	198	2450	974	271	2523
927	129	2381	949	199	2451	974	272	2524
928	130	2382	949	200	2452	974	273	2525
928	131	2383	949	201	2453	975	274	2526
928	132	2384	950	202	2454	975	275	2527
929	133	2385	950	203	2455	975	276	2528
929	134	2386	950	204	2456	976	277	2529
929	135	2387	950	205	2457	976	278	2530
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929	137	2389	951	207	2459	977	281	2533
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930	140	2392	952	211	2463	978	285	2537
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932	147	2399	955	218	2470	980	292	2544
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932	149	2401	955	220	2472	980	294	2546
933	150	2402	956	221	2473	980	295	2547
933	151	2403	956	222	2474	980	296	2548
933	152	2404	956	223	2475	981	297	2549
933	153	2405	957	224	2476	981	298	2550
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934	155	2407	957	226	2478	982	300	2552
934	156	2408	957	227	2479	982	301	2553
934	157	2409	957	228	2480	982	302	2554
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935	159	2411	959	230	2482	982	304	2556
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938	165	2417	961	236	2488	984	310	2562
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989	326	2578	1004	367	2619	1020	408	2660
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990	329	2581	1005	370	2622	1021	411	2663
990	330	2582	1005	371	2623	1021	412	2664
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992	336	2588	1006	377	2629	1023	418	2670
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993	338	2590	1007	379	2631	1023	420	2672
994	339	2591	1008	380	2632	1024	421	2673
994	340	2592	1008	381	2633	1024	422	2674
994	341	2593	1008	382	2634	1024	424	2676
994	342	2594	1009	383	2635	1025	425	2677
995	343	2595	1009	384	2636	1025	426	2678
995	344	2596	1009	385	2637	1025	427	2679
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996	346	2598	1010	387	2639	1026	429	2681
996	347	2599	1010	388	2640	1026	430	2682
996	848	2600	1011	389	2641	1027	431	2683
997	349	2601	1011	390	2642	1027	432	2684
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998	351	2603	1012	392	2644	1027	434	2686
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999	354	2606	1013	395	2647	1029	438	2690
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39	2	6857	53	2	8440	62	2	3800
40	3	6859	53	3	8451	63	3	3801
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29	15	9741	72	19	9795	110	1	8960
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31	21	9747	74	25	9801	117	3	11414
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32	23	9749	75	27	9803	119	3	6775
32	24	9750	76	28	9804	119	4	6776
33	25	9751	76	29	9805	119	5	6777
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41	37	9764	80	36	9812	127	16	6786
42	41	9767	80	37	9813	129	1	7833
42	42	9768	81	38	9814	130	2	7834
43	43	9769	81	39	9815	131	1	7651
43	44	9770	82	40	9816	132	2	7617
43	45	9771	82	41	9817	132	3	7619
43	46	9772	82	42	9818	133	1	6282
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46	1	11090	84	47	9823	135	2	3844
47	1	11480	84	48	9824	155	1	2696-1
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58	4	9586	89	61	9837	174	14	7046
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59	6	9591	89	63	9839	175	16	7048
59	7	9592	89	64	9840	176	17	7049
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194	29	7073	242	102	7147	257	169	7215
194	30	7074	242	103	7148	257	170	7216
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197	36	7080	246	108	7154	259	176	7222
198	38	7082	247	109	7155	259	177	7223
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199	40	7084	247	111	7157	259	179	7225
199	41	7085	247	112	7158	260	180	7226
199	42	7086	248	113	7159	261	181	7227
199	43	7087	248	114	7160	261	182	7228
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201	47	7092	248	118	7164	264	186	7232
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208	66	7111	252	137	7183	278	209	7262
208	67	7112	252	138	7184	279	211	7264
209	68	7113	253	139	7185	280	212	7265
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209	70	7115	253	141	7187	281	214	7267
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215	77	7122	254	148	7194	287	221	7274
216	78	7123	254	149	7195	288	222	7275
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217	82	7127	254	152	7198	290	225	7278
223	85	7130	255	153	7199	290	226	7279
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299	1	5929	390	1	63-1	471	46	9399
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301	4	5558	394	1	5383	474	51	9404
301	5	5559	394	1	5384	474	52	9405
301	6	5560	394	1	5385	475	53	9406
302	7	5561	394	1	5386	475	54	9407
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308	1	6408	425	11	9698	479	66	9419
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321	3	7908	436	1	7416	480	68	9421
323	5	7910	439	1	4472	480	69	9422
324	6	7911	439	2	4473	480	70	9423
324	7	7912	439	3	4474	481	71	9424
324	8	7913	440	4	4475	482	72	9425
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326	10	7901	440	6	4477	487	5½	3065
326	11	7902	441	1	9352	487	6	3066
326	12	7903	441	2	9353	487	7	3067
327	13	7914	441	3	9354	490	2	5178
332	1	11046	441	4	9355	493	1	9001
335	1	891	442	5	9356	494	2	9002
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365	15	7690	451	18	9370	517	1	6857
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367	19	7696	452	20	9372	521	1	9090
368	20	7697	452	21	9373	521	2	9091
369	21	7698	453	22	9374	522	3	9092
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377	1	4865	466	38	9391	530	16	9105
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538	1	10339	571	54	10390	611	108	10456
539	4	10340	573	55	10391	611	110	10457
540	5	10341	574	57	10393	611	111	10458
540	6	10342	575	58	10394	612	112	10459
541	7	10343	575	59	10395	613	1	4871
541	8	10344	576	60	10396	613	1	11039
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548	13	10349	579	66	10402	623	2	5782
548	14	10350	582	67	10403	624	3	5783
550	15	10351	583	68	10404	624	4	5784
550	16	10352	584	69	10405	628	6	5786
551	17	10353	584	70	10406	631	10	5790
551	18	10354	584	71	10407	632	12	5792
554	19	10355	585	72	10408	632	13	5793
555	20	10356	585	73	10409	633	14	5794
555	21	10357	585	74	10410	634	15	5795
555	22	10358	587	75	10413	635	17	5797
556	23	10359	588	76	10414	635	18	5798
557	24	10360	589	77	10415	636	19	5799
558	26	10362	589	78	10416	636	20	5800
558	27	10363	591	79	10421	636	21	5801
559	28	10364	593	81	10423	637	1	1823
560	29	10365	594	82	10424	637	2	1824
560	30	10366	594	83	10425	637	3	1825
561	31	10367	595	84	10426	638	4	1826
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563	36	10372	599	89	10431	644	2	11046
564	37	10373	600	90	10432	645	1	10261
565	38	10374	600	91	10433	646	3	10263
565	39	10375	605	93	10442	647	6	10266
565	40	10376	606	94	10443	648	7	10267
566	41	10377	606	95	10444	648	8	10268
566	42	10378	607	96	10445	649	1	2445
567	43	10379	607	97	10446	650	1	10486
567	44	10380	607	98	10447	651	2	10487
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67	6	5597	143	3	6744	223	5	6832
68	7	5598	144	4	6745	224	8	6831
69	1	6765	144	1	11603	232	8	8501
71	1	6908	150	6	11609	234	11	8505
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72	3	6910	151	8	11611	247	1	7823
74	1	10511	152	9	11612	252	2	8315
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309	5	2766	379	50	5987	426	14	5410
309	6	2767	379	51	5988	426	15	5411
310	7	2768	380	52	5989	427	16	5412
312	1	10960	380	53	5990	427	17	5413
312	2	10961	382	1	5872	428	18	5414
312	3	10962	383	2	5873	428	19	5415
312	4	10963	383	3	5874	428	20	5416
313	5	10964	383	1	8226	428	21	5417
318	1	7124	384	2	6789	429	22	5418
318	2	7128	385	1	5991	429	23	5419
326	1	3716	385	2	5992	430	24	5420
332	8	3723	386	1	42-1	430	25	5421
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436	32	5428	501	27	2972	533	2	11580
437	1	2665	501	28	2973	533	3	11581
443	2	11396	501	29	2974	534	4	11582
444	3	11397	501	30	2975	535	5	11583
444	4	11402	502	31	2976	535	6	11584
444	5	11403	502	32	2977	538	7	11585
444	6	11405	502	33	2978	538	8	11586
445	7	11433	503	34	2979	540	9	11587
445	8	11445	503	35	2980	540	10	11588
446	9	11434	503	36	2981	542	11	11589
446	10	11449	504	37	2982	543	12	11590
452	1	10422	504	38	2983	945	13	11591
454	1	5350	504	39	2984	547	14	11592
454	2	5351	504	40	2985	547	15	11593
455	3	5352	505	41	2986	549	16	11594
455	4	5353	505	42	2987	549	17	11595
457	6	5355	505	43	2988	549	18	11596
457	7	5356	506	44	2989	549	19	11597
458	8	5357	506	45	2990	550	20	11598
459	9	5358	506	46	2991	551	21	11599
460	10	5359	506	47	2992	551	22	11600
460	11	5360	507	48	2993	552	23	11601
461	12	5361	507	49	2994	552	1	4022
461	13	5362	507	50	2995	554	1	6019
461	14	5363	508	51	2996	555	2	6020
462	15	5364	508	52	2997	555	3	6036
462	16	5365	508	53	2998	556	1	6859
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477	4	6416	509	56	3001	577	20	7454
478	6	6418	510	57	3002	578	21	7478
478	7	6419	511	58	3003	579	23	7498
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493	5	2950	518	1	4876	593	3	6116
493	6	2951	519	1	3100	594	4	6117
493	7	2952	519	2	3101	594	5	6118
494	8	2953	520	1	1987-1	595	6	6119
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494	10	2955	522	3	1987-3	596	8	6121
495	11	2956	523	4	1987-4	596	9	6122
496	12	2957	524	5	1987-5	596	11	6124
496	13	2958	524	6	1987-6	596	12	6125
496	14	2959	525	7	1987-7	597	14	6126
496	15	2960	525	8	1987-8	597	15	6127
497	16	2961	527	9	1987-9	597	16	6128
497	17	2962	527	10	1987-10	598	2	4660
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498	21	2966	530	14	1987-14	599	6	4664
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601	13	4671	606	16	7635	636	36	4444
601	14	4672	607	17	7636	639	41	4448
601	15	4673	607	17½	7637	643	1	4763
602	1	7623	607	18	7638	644	2	9994
602	2	7624	607	19	7639	645	3	9995
602	3	7624½	607	20	7640	645	4	9996
603	6	7625	610	4	5835	645	5	9997
604	7	7626	614	5	4410	645	6	9998
604	8	7627	618	11	4416	662	1	10441
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22	1	4011	71	14	5666	102	80	5732
23	2	4012	71	15	5667	103	81	5733
24	1	8054	72	16	5668	103	83	5735
24	2	8055	72	17	5669	103	84	5736
24	3	8056	72	18	5670	104	85	5737
25	4	8057	72	19	5671	104	86	5738
27	1	8226	73	20	5672	104	87	5739
28	2	8229	73	22	5674	105	89	5741
29	1	8906	76	26	5678	105	90	5742
29	2	8907	76	27	5679	105	91	5743
30	3	8908	78	28	5680	105	92	5744
31	1	4341	78	29	5681	106	94	5746
32	1	5507	78	30	5682	106	95	5747
32	2	5508	78	31	5683	107	97	5749
33	1	5114	79	32	5684	108	101	5755
40	10	5130	79	33	5685	109	102	5756
42	14	5132	79	34	5686	110	103	5757
43	15	5133	80	35	5687	110	104	5758
43	2	8984	80	36	5688	112	105	5759
44	3	8985	80	37	5689	112	106	5760
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52	6	6544	84	49	5701	115	114	5768
52	8	6546	84	50	5702	115	115	5769
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141	1	1858	257	7	6950	337	1	4819
143	1	1862	258	8	6951	338	1	5021
146	1	228	258	9	6919	339	1	10542
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148	1	9709	261	1	4240	339	3	10544
149	2	9710	264	1	8895	340	4	10545
150	3	9711	265	1	9430	340	5	10546
151	4	9712	267	1	7877	340	6	10547
152	5	9713	268	2	7878	342	1	6531
152	6	9714	268	1	11376	343	1	11219
153	7	9715	269	2	11456	345	2	11275
153	8	9716	270	1	5494	347	3	11276
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178	5	5184	274	1	6155	348	1	5275
181	8	5213	275	2	6156	349	1	4583
186	1	5397	275	3	6157	350	1	10927
187	2	5401	275	4	6158	350	2	10928
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191	7	5406	278	1	7076	354	1	5609
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193	9	5412	294	5	3114	355	3	5611
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195	11	5427	296	8	3125	357	1	680-1
195	12	5428	296	9	3126	357	2	680-2
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200	3	5355	297	3	6261	361	1	9964
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202	5	5357	297	5	6263	362	1	10425
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204	7	5359	299	1	9660	365	2	9994
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205	9	5365	300	1	1730-1	365	4	9996
227	1	6382	301	2	1730-2	365	5	9997
228	2	6383	301	3	1718	365	6	9998
228	3	6384	301	4	1730-4	367	1	10463
229	4	6385	302	5	1730-5	370	1	11258
229	5	6386	302	6	1730-6	372	1	1864
232	1	3799	302	7	1730-7	375	1	9662
233	1	9687	303	8	1730-8	401	1	7987
236	1	2688-1	303	9	1730-9	402	2	7988
236	1	1230-1	303	1	6931	402	3	7989
237	1	8265	305	1	10729	402	4	7990
238	1	10015	305	2	10730	403	1	
239	1	5535	306	3	10731	404	2	11106
241	7	5536	306	4	10732	404	3	11107
241	8	4552	308	1	10899	405	1	7821
245	1	7247	309	1	86	405	2	7859
247	1	5514	315	1	6932	411	4	7880
248	1	4096	316	1	7565	412	5	7886
249	1	6005	317	2	7569	413	6	7888
250	1	3938	317	1	8968	413	7	7891
251	1	3884	318	1	9495	414	8	7968
252	2	3885	319	2	9496	416	10	8078
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425	8	9162	470	26	3672	527	2	9365
428	3	5925	470	27	3673	529	3	9425
429	4	5905	471	28	3674	531	5	9402
429	5	5904	471	29	3675	532	6	9357
429	6	5893	471	30	3676	533	1	6870
436	13	5958	471	31	3677	534	2	6871
437	14	5961	471	32	3678	535	3	6872
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440	18	5966	472	34	3680	536	5	6875
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441	1	4243	473	36	3682	537	7	6888
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443	4	4246	474	39	3685	539	3	11551
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449	5	9245	478	50	3696	543	14	11562
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453	12	9264	482	1	4977	548	1	1161-1
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457	19	9271	487	8	6801	553	7	3319
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463	3	3649	491	22	6815	564	15	3344
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463	5	3651	492	2	2527	567	19	3348
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586	50	3379	648	1	9493	688	4	7687
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586	52	3381	650	1	9114	690	8	7704
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589	3	7045	650	3	9116	694	7	5287
589	4	7046	651	4	9117	695	1	6860
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592	6	7071	652	7	9120	695	3	6862
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595	8	7088	652	9	9122	697	6	6865
596	9	7089	652	10	9123	698	7	6866
597	10	7102	653	11	9124	698	8	6867
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34	3	4534	60	9	7326	93	14	7723
34	4	4535	60	10	7327	95	17	7726
35	5	4536	60	11	7328	95	18	7688
35	6	4537	61	12	7329	97	22	7681
35	7	4538	61	15	7339	98	1	7641
35	8	4539	62	16	7340	99	1	5423
35	9	4540	65	1	4710	103	1	2750
35	10	4541	66	2	4711	103	2	2751
35	11	4542	66	3	4712	103	3	2752
38	1	5525	66	4	4713	103	4	2753
38	2	4584	66	5	4714	104	1	5787
38	1	9502	67	6	4715	105	2	5789
39	2	9503	68	7	4716	106	3	5796
39	3	9504	69	8	4717	108	1	4033
40	1	3115	69	9	4718	109	1	8636
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550	36	4442	608	13	8003	654	50	1420
550	37	4443	609	1	7873	655	51	1421
552	38	4445	612	1	9601	655	52	1422
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558	12	4358	626	2	3755	658	65	1435
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22	8	10103	96	1	7129	197	4	8250
23	9	10104	102	1	905-1	197	5	8251
24	10	10105	103	1	6401	197	6	8252
24	11	10106	104	2	10952	198	7	8253
25	12	10107	105	1	8122	198	8	8254
25	14	10108	106	2	8123	201	1	4094-1
25	15	10109	106	3	8124	202	1	4142
26	16	10110	108	1	6826	203	1	6545
26	17	10111	111	1	6792	205	1	4682
27	1	8304	112	2	6793	205	2	4683
28	2	8305	125	2	7416-1	205	3	4684
28	3	8306	127	2	7586	206	4	4685
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29	5	3106	132	1	2738	207	1	4739
29	6	3107	133	1	42-13	208	2	4764
30	7	3108	133	2	42-9	208	3	4776
30	8	3109	134	1	7693	210	4	4777
32	1	9154	135	2	7694	211	5	4778
42	1	2161	136	3	7695	211	6	4783
42	1	2445	138	1	6847	212	7	4789
50	1	4897	139	1	9388	212	8	4796
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53	1	7330	143	3	7395	217	13	4943
54	1	10753	144	4	7396	218	14	5031
55	1	4852	145	5	7397	218	15	5032
56	1	11213	146	1	5876	219	16	5033
57	1	4940	147	2	5877	219	17	5034
59	1	1532	147	3	5878	220	18	5035
61	1	10361	147	4	5879	220	19	5036
62	1	7920	147	5	5880	220	20	5038
62	2	7921	148	6	5881	221	21	5041
63	1	6123	148	7	5882	221	22	5042
64	1	10112	148	8	5883	222	23	5065
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233	3	8107	285	6	3175	322	38	7764
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250	4	7019	287	1	11068	327	46	7770
251	5	7020	287	2	11069	327	47	7771
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252	8	7023	289	1	9957	328	50	7774
252	9	7024	290	1	6160	329	52	7776
252	10	7025	290	2	6161	331	56	7777
252	11	7026	290	3	6162	331	57	7778
253	12	7027	290	4	6163	332	58	7779
253	1	11614	292	1	10922	332	59	7780
253	2	11615	292	2	10923	332	60	7781
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254	4	11617	292	4	10925	336	65	7786
254	1	9993	293	5	10926	336	66	7787
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257	3	6553	295	1	2724	337	69	7790
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258	1	9947	298	1	6626	338	71	7792
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261	1	11378	310	4	7730	366	7	7700
263	2	11407	311	5	7731	367	8	7701
266	1	9626	311	6	7732	367	9	7702
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273	2	2334-2	315	17	7743	380	11	10023
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273	1	2392	316	20	7746	384	2	6733
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279	4	6103	318	26	7752	392	2	11227
279	5	6104	319	27	7753	392	3	11228
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280	7	6106	319	29	7755	394	1	1864
280	8	6107	320	30	7756	396	1	10147
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408	3	6307	454	1	4919	509	21	3746
409	4	6308	455	2	4920	509	22	3747
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411	6	5534	458	7	4925	515	2	3831
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416	2	5005	465	6	5124	518	4	2563-6
417	3	5009	466	7	5125	518	1	2563-1
417	4	5010	467	8	5127	519	2	2563-2
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423	7	4912	472	17	5195	547	15	7460
423	8	4913	473	18	5199	549	17	7467
424	9	4914	473	20	5293	549	18	7468
424	10	4915	474	21	5340	550	19	7469
424	11	4916	475	23	5309	551	20	7470
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572	6	1993	623	4	6167	646	76	6238
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573	8	1995	623	6	6169	647	78	6240
574	9	1996	623	7	6170	647	79	6241
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586	5	3022	633	33	6195	671	5	9563
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588	8	3025	633	36	6198	673	8	9566
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589	1	6978	634	38	6200	675	10	9568
590	2	6979	634	39	6201	675	11	9569
590	3	6980	634	40	6202	675	12	9570
591	5	6982	635	42	6204	675	13	9571
591	6	6983	636	43	6205	677	14	9572
592	7	6984	636	44	6206	678	15	9573
592	9	6986	636	45	6207	678	16	9574
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602	26	7004	640	56	6218	704	3	8681
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606	32	7011	641	61	6223	709	1	1970
607	33	7012	642	62	6224	710	2	1971
607	35	7013	642	64	6226	711	3	1972
609	1	7603	643	65	6227	711	4	1973
610	2	7604	643	66	6228	711	5	1974
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61	117	10875	133	10	5968	179	1	5143
61	118	10876	133	11	5969	179	2	5144
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62	120	10878	134	13	5971	180	4	5146
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64	124	10882	135	17	5975	182	1	7239
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65	126	10884	138	1	9702	188	2	5704
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65	128	10886	139	3	9704	196	1	5805
65	129	10887	139	4	9705	198	2	5807
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78	3	2333-3	153	1	6937	207	1	2240-1
78	4	2333-4	153	1	8139	207	2	2240-2
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87	1	6839	157	2	10582	208	3	10001
87	2	6840	157	3	10583	208	4	10002
88	3	6841	157	4	10584	209	5	10003
88	3½	6842	158	5	10585	209	6	10004
91	1	9187	158	6	10586	210	7	10005
91	1	10974	158	7	10587	210	8	10006
92	1	96	159	8	10588	210	9	10007
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99	1	10744	159	10	10590	212	1	6991
99	2	10745	159	11	10591	213	1	8465
99	3	10746	160	1	11218	214	2	8485
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